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NO. 80-2045

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

DONALD LYNN BILLMAN, Appellant,

v.

COLUMBUS BAR ASSOCIATION, Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

JURISDICTIONAL STATEMENT

DONALD LYNN BILLMAN
915 South High Street
Columbus, Ohio 43206
614/443-0506

COUNSEL FOR APPELLANT

QUESTIONS PRESENTED

I. Whether Procedural Due Process and Fundamental Fairness under the Fourteenth Amendment of the Constitution of the United States are violated when in an action to suspend a Lawyer indefinitely from the practice of law the State Court having jurisdiction therein issues a "form opinion-judgment" without addressing procedural and substantive objections to the proceedings put to that State Court -- is such a Lawyer entitled to an opinion addressing such objections?

II. Whether Procedural Due Process and Fundamental Fairness under the Fourteenth Amendment of the Constitution of the United States are violated when in an action to suspend a Lawyer indefinitely from the practice of law charges are not "timely" heard under time restrictions in the State Supreme Court Rules and the proceedings are held in derogation of said Rule?

III. Whether Procedural Due Process and Fundamental Fairness under the Fourteenth Amendment of the Constitution of the United States are violated when in an action to suspend a Lawyer indefinitely from the practice of Law there is a joinder of multiple counts bearing no relationship to each other in time or in fact?

IV. Whether DR7-104(A)(1) of the Ohio Code of Professional Responsibility is violative of the Free Speech Clause of the First Amendment of the Constitution of the United States when applied in an action to suspend a Lawyer indefinitely from the practice of Law for having interviewed a potential witness for his client in a criminal case when: the person interviewed initiated the interview asking to be called as such a witness; the said Lawyer had independent knowledge that earlier the Witness' former counsel had terminated the representation; prior to

the interview the Witness indicated he did not desire to have a Lawyer represesenting him present; that the interview was conducted in an open and forthright manner by initially tape recording the complete interview thereafter having it transcribed and a number of days later presented it to said Witness, affording him the opportunity to destroy same or swear to its truthfulness before a disinterested notary public, thereafter filing said transcript with the court?

V. Whether DR7-104 (A)(1) of the Ohio Code of Professional Responsibility is viclative of the Free Speech Clause of the First Amendment of the Constitution of the United States when applied in an action to suspend a Lawyer indefinitely from the practice of Law for having communicated to a person who eight months before was represented by the Lawyer who filed the complaint when the person interviewed appears before the Board

of Commissioners and testifies that it was his desire to talk to the Lawyer for the purpose of testifying on behalf of the Lawyer's Client and that he did not want the complaining attorney present nor did he consider him to be his legal counsel? Whether therefore the provisions of DR7-104, "Communicating With One Of Adverse Interest" are for the protection of the person communicated with or for the interest of an attorney who may claim a right to be consulted prior to said interview?

VI. Whether DR4-101(B)(1)(2) of the Ohio Code of Professional Responsibility is violative of Due Process and Fundamental Fairness of the Fourteenth Amendment and of the Free Speech Clause of the First Amendment of the Constitution of the United States when applied in an action to suspend a Lawyer indefinitely from the practice of Law for having written a letter sent to a Bar Association upon their request in defense

of a complaint which a former Client had filed with the said Bar Association? Whether therefore such a requested communication made in self defense to a Bar Association and to no one else can itself serve as the basis for a complaint?

VII. Whether DR7-104(A)(1) of the Ohio Code of Professional Responsibility is violative of Due Process and Fundamental Fairness of the Fourteenth Amendment and of the Free Speech Clause of the First Amendment of the Constitution of the United States when applied in an action to suspend a Lawyer indefinitely from the practice of Law when the complaining adverse party testifys that it was she who contacted the Lawyer's Office upon the advise of her attorney and that at hearings she would attempt to engage the Lawyer in conversation in the presence of and with the apparent approval of her attorney? Further when under such circumstances the Commissioner finds that:

"It was difficult to ... determine who called whom," whether there is sufficient evidence to convict?

VIII. Whether DR2-110 (B)(4) & DR5-103(A) of the Ohio Code of Professional Responsibility are violative of Due Process and Fundamental Fairness of the Fourteenth Amendment of the Constitution of the United States when applied in an action to suspend a Lawyer indefinitely from the practice of Law for having filed a foreclosure action to collect a judgment achieved by his efforts acting under the authority of a contingency fee contract which he had fully performed and when the Client's desire not to proceed was not communicated to him and when the Lawyer moves the Court to substitute himself for the Client in that action to the extent of his contract immediately upon learning that the Client was acting at the exclusion of that Lawyer's interest by entering into a settlement agreement with the adverse Party's Attorney?

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JURISDICTIONAL STATEMENT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

DONALD LYNN BILLMAN, the Appellant, appeals from the final judgment of the Supreme Court of Ohio, dated March 4, 1981, confirming without explanation, the Final Report of its Board of Commissioners on Grievances & Discipline imposing upon Appellant Trial Lawyer the disciplinary sanction of "public reprimand" all passing over Appellant's various objections contending that the proceedings and Disciplinary Rules as applied were not constitutional as being violative of Appellant's rights as guaranteed by the Constitution of the United States in this action to suspend him indefinitely from the practice of law brought by the COLUMBUS BAR ASSOCIATION.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio dated March 4, 1981 was not reported. The opinion is reprinted in the Appendix hereto, p. 1a, *infra*.

The findings of fact and recommendation of the Board of Commissioners on Grievances & Discipline of the Supreme Court of Ohio, filed November 5, 1980, are not reported. They are reprinted in the Appendix hereto, p. 3a, *infra*.

JURISDICTION

The judgment of the Supreme Court of Ohio publically reprimanding Appellant an Ohio & Federal Trial Lawyer was entered on March 4, 1981. See p. 1a, *infra*.

A Notice Of Appeal to this Court was duly filed in the Supreme Court of Ohio on May 29, 1981. See p. 18a, *infra*.

This appeal is being docketed in this Court within 90 days from the entry of judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(2).

CONSTITUTIONAL PROVISIONS & RULES

First Amendment, United States Constitution:

"Congress shall make no law ... abridging the freedom of speech ...".

Fourteenth Amendment, United States Constitution:

"...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

DR2-110(B)(4),Ohio Code Of Professional Responsibility:

"A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(4) He is discharged by his client"

DR4-101(B)(1)(2), Ohio Code Of Professional Responsibility:

"Except when permitted under DR4-101(C), lawyer shall not knowingly:

(1) Reveal a confidence or secret of his Client.

(2) Use a confidence or secret of his client to the disadvantage of his client."

DR5-103(A), Ohio Code Of Professional Responsibility:

"A lawyer shall not acquire a proprietary interest in the cause of action or subject

matter of litigation he is conducting for a client, except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contact with a client for a reasonable contingent fee in a civil case."

DR7-104 (A)(1), Ohio Code Of Professional Responsibility:

"During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so."

Rule V. Disciplinary Procedure, (4) Application Of Rule; Ohio Supreme Court Rules, Government Of The Bar:

"The investigation of complaints shall be concluded within sixty days from the date of the receipt of the complaint. A decision as to the disposition of such complaint shall be made within thirty days thereafter. Extensions of time for completion of the investigation may be granted upon written request, and for good cause shown, by the Secretary or Acting Secretary of the Board of Commissioners on Grievances and Discipline. If an investigation by the Grievance Committee of a local bar association or the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association is not completed within one-hundred-fifty days, the matter under investigation shall be referred to the Disciplinary Counsel."

* * *

RAISING THE FEDERAL QUESTION

At the earliest stage of the disciplinary proceedings below the Appellant raised the claims -- by way of defenses presented in Answers filed as the Complaint was amended, at the Fact Finding Hearing before the Panel of the Board of Commissioners on June 2, 1980 and in his Post Hearing Brief filed with the Panel on August 7, 1980 -- that the proceedings were in violation of the Ohio Rules Governing The Bar and that such individual provisions of the Ohio Code of Professional Responsibility were being applied in a manner repugnant to the basic rights of Free Speech, Due Process and Fundamental Fairness as guaranteed by the United States Constitution. The Panel of the Board of Commissioners brushed aside the constitutional claims without comment. See: Findings Of Fact & Recommendation of the Board of Commissioners on Grievances & Discipline, p. 3a, *infra*.

The Constitutional Claims were reiterated by Appellant before the Supreme Court of Ohio in his Objections & Brief To The Findings & Recommendation of the Board Of Commissioners filed on November 25, 1980 in response to that Court's Order To Show Cause issued on November 5, 1980. See: Copy of "Objections Presented", p.19a, *infra*. The Ohio Supreme Court likewise brushed aside the Constitutional Claims without comment. See opinion and judgment below, p.1a, *infra*. It thus apparently considered and tacitly rejected the federal constitutional claims.

STATEMENT OF THE CASE

The Appellant, Donald Lynn Billman, was admitted to the practice of law in Ohio in 1972. At all material times he resided in and maintained his Law Office in Columbus, Ohio.

The matter which went to the Ohio Supreme Court from the Board Of Commissioners On Grievances & Discipline by way of their Final Report

with the Recommendation that the Attorney be "Publicly Reprimanded" for having been found to have committed "... an ethical impropriety ..." in four (4) instances of a total of ten (10) counts filed against him by the Columbus Bar Association.

The matter involved atypical disciplinary charges. There was: no charge of misappropriation of clients funds, see, *Bar Assn. of Clev. v. Canales*, 62 Ohio St 2d 207 (1980): no charge of having been convicted of a crime, *see Bar Assn. Of Cleve. v. Chuasta*, 62 Ohio St 2d 429, (1980); no charge of failing to file tax returns, *see Col. Bar Assn. v. Dunbar*, 62 Ohio St 2d 360, (1980); no charge of fraud against the government, *see Akron Bar Assn. v. Murty*, 62 Ohio St 2d 300, (1980). Respondent Attorney was not charged with laziness or inattention to rules of practice and no Judge of any Court has complained about him, *see Dayton Assn. v. Timen*, 62 Ohio St 2d 357 (1980).

Those whose complaints the Columbus Bar Association prosecuted were persons having great

personal anomosity for this Trial Lawyer: being vanquished persons whose causes were defeated when this Lawyer represented their opponents in Court; being a former Secretary whose "love" for her Attorney-Employer was not returned; an Attorney on the other side of a case who, after being defeated in litigation with Appellant secretly settled the judgment received with "opposing" party at the exclusion of Appellant's interest; a former Client whom the lawyer represented briefly in a divorce action until he refused to prosecute the cause in the manner in which she desired and upon his termination of the representation she filed a protest to which the Lawyer filed a response with the Bar Association which served as the basis for their Complaint, and by a Public Defender who had his feelings "ruffled" when a former "client" of his was called as a witness by Appellant on behalf of his Client and in the course of testifying remarked upon the Public Defender's lack of attention to the Witness' interest at an earlier date.

Appellant is a Trial Lawyer who loves the Profession of Law and is brimming with enthusiasm and dedication to causes which he champions and the clients whom he represents all attested to in testimony before the Panel: by two outstanding Judges of local courts, by a member of the Ohio Governor's Cabinet, by a Department Head of a local Hospital and by the Senior Pastor of Appellant's Church where this Attorney actively participates. The testimony and opinion of such persons being in stark contrast to the picture painted by the Columbus Bar Association and their witnesses of much less calabre.

Course Of Proceedings

Appellant had his first notice that the Columbus Bar Association, hereinafter designated CBA, was investigating complaints against him which would ultimately be contained in a formal complaint was on November 13, 1978 upon receipt of a letter dated November 9, 1978 from the Administrative Assistant of the CBA.

The said letter from the CBA contained an Affidavit from Ruth Sharon Jenkins alleging that Attorney had "telephoned" her -- Appellant had represented Joseph C. Jenkins in a contested divorce action which had been concluded in Mr. Jenkins favor on November 8, 1978. In compliance with the CBA's request that this Attorney respond to those allegations a reply was prepared and mailed to the CBA's Administrative Assistant on November 14, 1978.

The Lawyer heard nothing further concerning the filing of charges of unprofessional conduct until January 24, 1979 when a telephone call was received from Mr. Bruce Campbell indicating that he had been appointed, by the CBA, Chairman of a committe of three to investigate complaints filed against this Lawyer by: (1) Ruth Sharon Jenkins, (2) Barbara Blair and (3) Beverley Boyer. Appellant agreed to cooperate with the CBA's Committee and during the afternoon of January 26, 1979 met with the said Committee in conference in his Office.

Thereafter Appellant heard nothing for over nine (9) months -- until October 18, 1979 when a letter dated October 15, 1979 was received from the CBA's Administrative Assistant advising the Attorney that they were filing a Complaint with the Ohio Supreme Court against this Lawyer.

The Complaint was filed on October 12, 1979 containing allegations by Ms. Boyer, Mr. Brandt, Ms. Jenkins and Ms. Blair with a Notice To Respondent of Filing Of Complaint being filed on October 18, 1979.

Appellant's Answer was filed on November 26, 1979 by himself with Attorney Thomas M. Tyack as Co-Counsel.

On December 18, 1979 Attorney Tyack withdrew as Counsel upon the suggestion of the CBA's Ethics Committee upon an objection to said representation being lodged by Ms. Boyer who claimed that she had once talked to one of the Attorneys in Mr. Tyack's Office regarding representation for herself.

On December 21, 1979 Appellant was advised by the CBA that a complaint had been filed by one C. Kay Block and that a response was requested.

On December 26, 1979 Appellant responded personally -- at the time not yet having retained new Counsel -- to the charges of Ms. Block directly to her with a copy thereof to the CBA as they had requested.

An Amended Complaint was filed against the Appellant on January 22,1980 containing the original allegations together with a count alleging an impropriety for having sent CBA a copy of the letter to Ms. Block.

Appellant's Answer to the Amended Complaint was filed on February 12, 1980 by Attorneys Young and McDermott who had filed an Appearance Notice on January 10, 1980.

A Second Amended Complaint was filed on March 21, 1980 containing the allegations of

the Amended Complaint together with a count alleging an impropriety filed by Public Defender Walters.[1]

Appellant's Answer to the Second Amended Complaint was filed on April 16, 1980 by Attorneys Young and McDermott.

The Board Of Commissioners On Grievances & Discipline on April 28, 1980 filed a Notice Of Formal Hearing scheduling the matter before a Panel Of Commissioners commencing on June 2, 1980.

On June 2, 1980 the formal Hearing was held in this matter before a Three Person Panel Of Commissioners continuing until the afternoon of June 3, 1980.

On November 5, 1980 the Finding Of Fact & Recommendation of the Board Of Commissioners On Grievances & Discipline were certified to the Supreme Court finding the Appellant guilty of

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1. The Finding Of Fact & Recommendation of the Board of Commissioners contains almost a verbatum of the Second Amended Complaint, see p.3a, infra.

four (4) charges and not guilty of six (6) charges as contained in Second Amended Complaint recommending a "Public Reprimand."

On November 5, 1980 the Chief Justice of the Ohio Supreme Court issued the Court's Show Cause Order as to why the recommendation of the Board Of Commissioners should not be confirmed and the disciplinary order entered.

Appellant's Objections & Brief In Support was filed on November 25, 1980. Appellant filed *pro se* wherein he stated "Respondent (Appellant) is submitting this response ... pro se as this matter has to date resulted in legal fees and expenses which he is unable to satisfy. Without funds to adequately compensate counsel he appears on his own behalf."

Appellee CBA filed Objections on or about November 25, 1980 by their Administrative Assistant, Robert F. Mahler.[2]

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2. *Appellee's Objections were signed and served by Robert F. Mahler who is not an attorney.*

STATEMENTS OF FACTS

The Accused Attorney

> "One of the fundamental tenets of the professional responsibility of a lawyer is that he should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach...".
>
> *Cleveland Bar Assn.v.Stein*, 29 Oh St 2d 77,81 (1972)

The Appellant Trial Attorney was admitted to practice before the Supreme Count of Ohio on May 6, 1972; the U.S. District Court,Northern District of Ohio on June 29, 1973; the U.S. District Court, Southern District of Ohio on January 24, 1974; the U.S. Court of Appeals,6th Circuit on June 13, 1975, and this Court on June 21, 1976. His professional career being dominated by the three years which he served as the Chief Trial Counsel for the Ohio Department of Rehabilitation & Correction, being an Assistant Attorney General of Ohio and then retained by the Ohio Department of Corrections' Adult Parole Authority to impliment an "On-Site Hearing"

Procedure for Parolees facing parole revocation as mandated by this Court in the decisions begining with *Morrisey v. Brewer*, 408 U. S. 471 (1972) -- being the first Attorney On-Site Hearing Officer for the State of Ohio. On June 1, 1976 Appellant opened his private Law Office.

The professional reputation of this Trial Lawyer was brought into issue by Appellee Bar Association who contended that Attorney Billman "... demonstrates so little regard for and appreciation of the ethical values which are the underpinnings of our legal system ..." that he should be stripped of his license to practice law. A number of character witnesses appeared on behalf of this Trial Attorney:

A. The Honorable George E. Tyack, *Judge Of The Franklin County Court of Common Pleas*

The Honorable George E. Tyack, Judge of the Franklin County Court of Common Pleas, appeared on behalf of Appellant. Judge Tyack's impecc-

able credentials are well known in Ohio,having been a Judge of that Court since 1973 prior to which time he had been in the private practice of law for twenty three years. Appellant appeared before Judge Tyack on numerous occasions and the Judge also followed a highly unusual precedent setting case -- in which he prevailed -- which was tried before another Judge of that Court. Trial Judges who have seen members of the Profession on "the firing line" are not only in the most advantageous position to assess professional qualifications but also have a vested interest in assuring that professional standards and qualifications are upheld. Judge Tyack testified as to this Trial Lawyer:

> Q. Based upon Mr. Billman's deportment, demeanor and methodologies when he appeared before you, Judge Tyack, were you able to form an opinion as to his competency as a trial lawyer?
>
> A. I did.
>
> * * *
>
> Q. Would you tell us what that opinion is, Judge Tyack?
>
> A. I considered that Mr. Billman was competent and dedicated practitioner.

Q. Based upon your observations, what caused you to make this additional conclusion with respect to his dedication?

A. Well, Don is somewhat of an abrasive individual in my opinion, speaking as a Judge. It seemed to me like he prepared his cases very well and I thought, frankly, he had more confidence in his clients than I might have, had I been a practitioner, as common of young lawyers. They believe their clients.

Q. Yes. Has he, when he appeared in your Courtroom, reflected a dedication to the causes of his client?

A. I felt very much so, very much so.

Q. Did he demonstrate himself to be a competent trial lawyer?

A. He certainly did.

(Tr.II:274-276)

B. The Honorable Sidney H. Golden, *Judge Of The Franklin County Municipal Court.*

The Honorable Sidney H. Golden, Judge of the Franklin County Municipal Court, appeared on behalf of this Trial Lawyer. Judge Golden is well known to the Courts and Lawyers of Central Ohio as a most dedicated and well admired Jurist having been on the Bench for over ten years prior to which he had been in private practice for ten

years. Attorney Billman has appeared before Judge Golden on numerous occasions since 1976 -- when Mr. Billman opened his private practice -- with at least eight trials principally in criminal cases but also civil cases. Judge Golden testified as to his observations of this Attorney:

Q. And during these occasions when Mr. Billman has appeared before your Court, have you been able to make observations concerning his behavior and demeanor as an officer of the Court?

A. Yes.

Q. What have those observations been?

A. I have always been very impressed with Donald Billman. As a Judge and once being a young lawyer myself, I always look for qualities in a trial lawyer.

Number one,I was impressed with Donald Billman because he gave a very fine impression as an officer of the Court. Little things such as always standing to address the Court, the manner in which he would question witnesses, the manner in which he approached the Bench, the manner in which he gave to lay people an impression of the Court, even though we are a lower Court.

The representation that he would make to the Court,both at the Bench and in opening statements, Don always -- never overemphasized any matter that he was presenting to the Court. If he

said he had a witness to substantiate a matter of proof, he had that witness. If he said that he was going to present a matter in regard to his case, he was able to present it.

I had a very good impression of Don Billman as an exemplary officer of the Court in his appearance. He seemed to take a great deal of interest in representing his clients and was very forceful in a responsible way in representing Defendants charged in criminal cases.

* * *

Q. Is that the uniform situation that you find without mentioning any other names Judge?

A. No, unfortunately not true. The habits that I learned as a young lawyer in the Court,I think helped me in future years.

Today,although,we have a lot of good young Members of the Bar, sometimes they forget the things that they should do. Like I mentioned, standing to address the Court,presenting a little more formal atmosphere so that the lay people have a little more understanding and hopefully a respect for our Court system.

Many times we don't see that in young lawyers. We always saw the very best in Don Billman and I can say that very sincerely.

Q. Did you ever have any occasion during this period of time when he appeared before your Court to have any question concerning his integrity or professional ethics?

* * *

A. I never had an occasion to ever question either of those two aspects of his appearances.

Q. Based on your personal observations of Mr. Billman's practice before your Court, how would you rate him as a Member of the Bar of this community?

* * *

A. I would give him a very high rating as an officer of the Court.

(Tr.II:115-119)

C. Director George F. Denton
Ohio Department Of Rehabilitation & Correction.

George F. Denton is the Director of the Ohio Department of Rehabilitation & Correction being a member of the Governor's Cabinet and the Chief Administrative Officer of Ohio's Nine Prisons and the Ohio Adult Parole Auhtority. Testifying that during the last ten years major Federal Court decisions relating to constitutional rights of Prison Inmates have made it manditory that the Director of Prisons work closely with legal counsel. Mr. Denton having known Attorney Billman since 1973 upon his being assigned as Counsel to the Department Of Corrections, at the time

an Assistant Attorney General of Ohio. It was this Trial Lawyer who represented the Ohio Department of Corrections in civil rights case before the Federal Courts counseled them as to developments in this area of the law.[3]

Of particular significance here, in view of allegations concerning the Trial Lawyer's performance under stress, was the testimony of Director Denton describing the important role which this Attorney performed for the State of Ohio when he went into the Southern Ohio Correctional Facility -- Ohio's Maximum Security Prison -- and lived there while it was under seige for over twenty four days in 1975 leaving only by National Guard Helicopter to go to hearings in the Court of Common Pleas for Scioto County, Portsmouth,Ohio:

> Q. Now, you mentioned the role that he played with respect to the strikes that occurred at your institution in 1975. In addition to serving as

---

3. Appellant's opponent in the majority of the action in Federal Court was the American Civil Liberty Union whose chief trial counsel was also the chairman of the CBA Committee that initiated and prosecuted this disciplinary action.

the counsel in the litigation relating to the strikes, did he also have occasion to remain on site at one or more of the institutions to provide instant advice to you as to how to handle those matters?

A. Yes. The circumstances at Lucasville or the Southern Ohio Correctional Facility were such that our ingress were blocked and for, I believe, 23 or 24 days we had sort of a hostage crew working there day and night.

Mr. Billman volunteered to go into the institution and assist the warden and the staff there in circumstances that developed and also, of course, was on site and collected information and filed for the temporary injunction and then later other action in that Court.

* * *

Mr Billman was very instrumental in bringing that situation to some control because it was practically out of control, with his liaison with the enforcement officer there and National Guard.

Then, of course, the hearings in the Courtroom itself and in following that up until there was -- we were able to get back into some normal operations.

(Tr.II: 128-129)

Director Denton further described his impression of Attorney Billman as their professional and personal relationship has continued since 1973 to the present:

Q. In terms of the litigation that Mr. Billman handled for the department and various members of the department while he served in this capacity,what were your observations as to whether or not he performed his duties in a dedicated fashion?

A. I felt he performed his duties in a very dedicated, very competent fashion.

Q. Have you had occasion, especially since the recent Supreme Court Developments, to work with a variety of lawyers in terms of representing the interest of the department and its various employees and members?

A. Yes, I have.

A. How would you rate Mr. Billman vis-a-vis the other lawyers with whom you have come into contact with that respect?

* * *

A. Well, I would rate Mr. Billman as the most dedicated administrative lawyer that has been assigned to the department or to any administration that I have had responsibility for.

(Tr. II:129-130)

D. Hospital Director Richard R. Schnurr: *Talbot Hall,St.Anthony Hospital,Cols. Ohio*

Richard R. Schnurr is a Department Head at St. Anthony Hospital and being the Executive Director of Talbot Hall a widely acclaimed alcohol treatment center, Director Schnurr tes-

testified how Attorney Billman and he became acquainted in early 1977 when this trial Lawyer began representing a Client afflicted with the desease of alcoholism:

Q. Do you ever have occasion to be called by Mr. Billman to testify as an expert witness in judicial proceedings?

A. Yes, I did, I and two of our physicians testified in a case in which Mr. Billman was the counselor.

* * *

Q. Did Mr. Billman work out directly with you and the physicians preliminary to the giving of that testimony?

A. Yes,he did. He worked very hard at educating himself, as a matter of fact. on what alcoholism is and what it isn't

His client had been a patient in our unit and had gotten -- I don't remember how,to Mr. Billman to represent him. Mr. Billman took his case and educated himself in what he was defending against. Approached me, approached my Clinical Director of Adult Treatment, who is Mr. Harold Grevenow. He approached our internists in staff, who are quite familiar with the disease and the biochemistry of the desease and Mr. Billman put his case around a lot of that testimony and I testified as to treatment and what alcoholism is and what alcoholism is not. That was a jury trial, as I remember.

* * *

Q. After completion of the experience with Mr. Billman in the case that you and others in the hospital worked with him on, what was your personal and I am asking you now, your personal evaluation of how Mr. Billman performed in the preparation for and handling of that case?

* * *

A. My response is, I was very much impressed with the length that he went to in his preparation previous to the trial,his conduct during the trial, and his zealousness on how he handled the entire case. As a result of that, I was so impressed that I recommended to the Administrator of the Hospital who is my immediate supervisor, my immediate boss, that we ask Mr. Billman to serve on the advisory board for my Department, which is made up of professional people who have some affiliation with alcoholism and from various sectors of the city.

So my impression was at the time, quite positive and I took some steps to act on that in order to make him a member of my board.

Q. Is he now a member of your board?

A. He is now a member of my board.

Q. Have you,since this period of time in a tie-on to taking that action had occasion to refer clients to Mr. Billman?

A. Yes, I have. Either I have or my Clinical Director has.

(Tr.II: 193-196)

Hospital Director Schnurr, based upon his continuing relationship with Attorney Billman and observations of his professional aptitude and demeanor, has had this member of the Legal Profession appointed to the Advisory Board for St. Anthony's Talbot Hall and continues to refer Clients to him.

E. Reverend George A. Hartman:
Senior Pastor St.John's Evangelical Lutheran Church, Grove City, Ohio

Reverend George A. Hartman is the Senior Pastor of St. John's Evangelical Lutheran Church in Grove City, Ohio and has been in the ministry for twenty three years. Pastor Hartman testified on behalf of Attorney Billman describing the Lawyer's activity in his Parish and the personal qualities of the Attorney as a member of the Community.

Q. Could you give us some description of what relationship you have had with Mr. Billman in that capacity?

A. Mr. Billman has been, during my ministry and long before, a very active member of that congregation. He is a deeply religious

He has given lay sermons in our parish and has participated as a layman assisting with dispensing communion and, of course, active in just about anything that he is needed for.

* * *

Q. What have been your personal observations concerning his integrity and honesty?

A. In working with him and with his family ... he has just simply demonstrted a reliability. In conversation with him,he has shown himself to be a man of just -- very high outlook on things, very religious fellow. I have been able to count on him on all occasions that I have asked him to help me with anything.

Q. Have you had personal observations concerning his integrity?

A. Just that he is honest in what he says and speaks for. He seems to know right from wrong and participates in the discussions that we have on that with sound integrity and certainly what he says seems very exemplary to me.

(Tr. II: 187-190)

The view of the Appellee CBA that this Trial Lawyer "... demonstrates so little regard for and appreciation of the ethical values which are the underpinning of our legal system ..."is totally at odds with the current reali-

of this Attorney's professional life as demonstrated by the impeccable references which appeared on his behalf. These are not the kind of people who take lightly the significance of these proceedings. Appellee CBA has presented the testimony of much less credible witnesses who have described Attorney Billman in very unseemly terms.

Nature Of The Accusers

The persons whose complaints served as the basis of this disciplinary proceeding were persons having great personal anamosity for this Trial Lawyer. The Panel of Commissioners characterized them as "... a very difficult group ...", *see* p.16a[4].

The motives of such persons should be, in the nature of human experience, be highly suspect. It has been Appellant Lawyer's continu-

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4. The Panel of Commissioners incorrectly identified the "group" as "clients" whereas only one was in fact a Client and one a former Secretary and the others were "opponents."

ing contention that a number of very weak charges were joined together so that they are suddenly strengthened by joinder and thereby prejudicing the fairness of the proceedings. Bar Associations should not be permitted to bolster unsupportable charges by joining them with others. In order to accomplish this prejudicial joinder it was necessary to disregard the "time" restriction in the Ohio Supreme Court's Rules. When the four charges of which this Trial Lawyer was convicted are reviewed in isolation their weakness is apparent.

STATEMENT OF THE CASE

> "The primary function of an appellate court is ... to decide cases ... carefully and thoroughly with the ends of justice ever in mind ...
>
> Traditionally, this primary function of the court is accompanied by the requirement in the public interest that the court express in writing the reasons for its decision."
>
> Query Column, Merrill
> *JUDICATURE*, Vol 64,
> No. 10, p. 435, May,1981

The Ohio Supreme Court on March 4, 1981 issued a one page opinion and judgment in this disciplinary proceeding merely brushing aside the Constitutional claims raised in Appellant's Objections (*see* p. 19a) without comment. In disciplinary proceedings involving allegations which are not even contested, such as a federal conviction for "willful failure to file income tax returns" the Ohio Supreme Court writes opinions, *see: Columbus Bar Assn v. Dunbar*, 62 Ohio St 2d 360 (1980).

The Supreme Court of Ohio has stated its role in disciplinary cases and the function of its Board Of Commissions in *Mahoning County Bar Assn. v. Ruffalo*, 176 Ohio St 263, 264 (1964) to be:

> "In cases of this kind, the board of commissioners acts for and on behalf of this court. In doing so, it makes recommendations as to the facts which should be found and the action which should be taken by this court. However, this court has full responsibility for determining what the facts are and what action should be taken on those facts."

The extension of this rule is that the Supreme Court must "examine the entire record" when the "evidence presented at the hearing (is) in sharp conflict," *Columbus Bar Assn. v. Teaford*, 6 Oh St. 2d 253, 254, (1966), *also see In Re Disbarment Of Lieberman*, 163 Oh St.35 (1955).

In regard to the consideration due this Trial Lawyer's rights the Supreme Court of Ohio violated its own established practice.[5]

The Lack Of A Speedy Hearing

> "... it is not completely fair to require ... (an attorney) to respond to claims which have grown stale by the passage of time ... the prosecution of old claims is not favored."
>
> *Cols. Bar Assn.v.Teaford*
> 6 Oh St 2d 253,255, (1966)

The Supreme Court of Ohio in *Teaford* expressed its disapproval of requring Lawyers to

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5. The Ohio Supreme Court here exercised its discretionary right to access costs by ordering this impoverished Trial Lawyer to pay $2,797.53 -- in reviewing hundreds of reported disciplinary cases not one other such order was found.

defend "stale" complaints. Thereafter the court made the requirement of "a speedy hearing" a part of its Rules for the Government of the Bar at Rule V, *Disciplinary Procedure*, (4) Application of Rules. See the applicable paragraph set forth at p.6,*supra*

The plain language of Rule V, Section 4, requires that investigation be completed within one hundred and fifty (150) days if the local bar association intends to retain jurisdiction. The Joint Stipulation of Facts (Sic) filed on or about June 30, 1980 and submitted subsequent to the Hearing on this matter shows that only those charges set forth in the Second Amended Complaint at Paragraphs 26a, (Boyer) 42, (Block) and 51 (Walters) were processed in accordance with the above cited Rule. Thus, of the ten charges of misconduct *only three* were shown to be handled in a timely manner. The Appellant was found not guilty of the charge at Paragraph 26a, however was found guilty of the charge contained at Paragraph 24

(Boyer Foreclosure Matter) and the charge contained at Paragraph 36 (Jenkins Telephone Matter) -- both clearly beyond the time allowed under the rules.

The prejudice occasioned by a Complainant who "delays" their complaining is also present although not addressed by the Rules. This is illustrated by the complaints of the disgruntled domestic case opponent of the Trial Lawyer. On November 7, 1978 -- a day after the divorce trial which she lost -- Ms. Jenkins filed her initial complaint by way of an affidavit filed with the Bar indicating that the Appellant had "telephoned her." On December 21, 1978 she filed a second charge indicating that Appellant had "assaulted" her in a "hearing on August 8, 1978" (there was no hearing that day nor were the parties at Court) stating that she had "forgotten" the assault when she gave the Bar Assn. her affidavit.

That the time factor is not significant cannot be denied -- of particular note is the

fact that the first complaint received, which ultimately was contained in a Complaint filed with this Court, was the complaint of Ms. Jenkins received on November 7, 1978 which was not filed until eleven (11) months later and which did not go to hearing for a year and one half later.

It is generally recognized that bar association disciplinary proceedings are quasi-criminal in nature and that an accused has basic due process rights and rights of fundamental fairness which must be respected. *See, In Re Ruffalo*, 390 U.S. 544 (1968). An attorney may not be disbarred for asserting his Fifth Amendment rights against self-incrimination in disciplinary proceedings. *See, Spevack v. Klein*, 385 U.S.511 (1967). The right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution is applicable to state proceedings. *See, Klopfer v. North Caroline*, 386 U.S. 213 (1967). In addition, the Ohio Supreme Court has recognized that Article I,Section 10 of the Ohio

Constitution guarantees an accused the right to a speedy trial. *See, State v. Meeker*, 26 Ohio St 2d 9 (1971) and *State v. MacDonald*, 48 Ohio St 2d 66 (1976).

While disciplinary proceedings against Lawyers were designed to "protect the public" it is recognized that such constitute a potential "... punishment or penalty imposed on the Lawyer," *In Re Ruffalo, supra*, 550. The constitutional rights of an accused Lawyer must not be trampled and ignored under the guise of pursuing "public interest" -- both fundamental fairness and due process require that Bar Assns. acting as prosecutor, abide by the basic rules of fundamental fairness in disciplinary proceedings.

Appellee failed to follow the minimum due process requirements set forth in Ohio Rule V, Section 4. The inclusion of the stale and untimely charges tainted the entire proceedings and constituted prejudicial procedure. The failure to follow Disciplinary Rules relative to time is apparent in the following calendar.

CALENDAR OF RELEVANT DATES/TIME RULE

HEARING DATE: JUNE 2, 1980

Complaint	*Date Of Allegation*	*Lodged/Bar Decis.*	*Bar's Comp. Filed*	*Dispo-sition.*
Boyer "Foreclosure"	*11-2-78*	*11-13-78*	*7-10-79*	*10-12-79*	*G*
Boyer "Employee Loans"	*12-17-76*	*11-13-78*	*7-10-79*	*10-12-79*	*NG*
Boyer "Guaranteed"Money	*2-16-77*	*11-13-78*	*7-10-79*	*10-12-79*	*NG*
Boyer "Agreement"	*2-16-77*	*1-5-80*	*1-8-80*	*2-12-80*	*NG*
Brandt,Esq. "Mason Letter"	*1-2-79*	*1-5-79*	*7-10-79*	*10-12-79*	*NG*
Jenkins "Calls"	*11-2-78*	*11-7-78*	*7-10-79*	*10-12-79*	*G*
Jenkins "Assault"	*8-8-78*	*12-21-78*	*7-10-79*	*10-12-79*	*NG*
Blair "Assault"	*7-2-78*	*8-10-78*	*7-10-79*	*10-12-79*	*NG*
Block/CBA "Letter"	*12-26-79*	*	*1-8-80*	*2-12-80*	*G*
Walters,Esq. "Pack Witness"	*1-22-80*	*2-29-80*	*3-11-80*	*3-21-80*	*G*

Legend: G ... "Guilty"
NG ... "Not Guilty"
** ... The date the CBA recorded in their Stipulation as to time Complaints were received indicates the Block Letter Complaint was received on 12-11-79 -- fifteen (15) days before it was written.*

THE QUESTIONS ARE SUBSTANTIAL

The Supreme Court of Ohio did not explain why Appellant's conduct constituted violations nor did it distinguish in any way the applicability of the individual Disciplinary Rules. That Appellant's Constitutional Rights were violated by the application of the Disciplinary Rules to the facts here as is evident upon an assessment of the four findings of "guilt."

1. "The board finds that the Respondent, while representing one Timmy Joe Rife on a felony charge in Case No. CR-02-294A in the Franklin County Common Pleas Court did contact James Pack who was represented by Attorney Eric W. Walter of the Franklin County Public Defender's Office,which representation was known by the respondent. The board finds that on or about January 22, 1980,without the approval of James Pack's attorney, the respondent interviewed James Pack and filed a transcription of the interview as an exhibit to a motion for a new trial, knowing that, at all times, James Pack was represented by Counsel."

Appellant was charged by Public Defender Walters for having communicated "with his client ... knowing that said Attorney was representing Mr. Pack." The Appellant admitted that he had knowledge that Mr. Walters was representing Mr.

Pack prior to January 7, 1980 -- the day the case was scheduled for trial -- however when Mr. Pack failed to arrive Attorney Walters advised the Prosecutor that he was withdrawing as Counsel for Mr. Pack.

Attorney Walters testified at the June 2, 1980 trial appearing in support of his charge against this Lawyer and at that time testified that he was appointed counsel for Pack on Mar. 9, 1979 (Tr.II.54) and that he had seen his Client for the first and last time -- prior to the trial date of Jan. 7, 1980 -- on May 11,1979 (Tr.II:54). In regard to what occurred on Jan.7, 1980 Mr. Walters testified as to what had occurred when his client failed to appear:

> Q. What did you tell the Prosecutor at that time?
>
> A. That I hadn't heard from him (Pack) in quite some time and I had no reason to suspect he was going to show up and I would have to secede. I would have to agree to having -- and I had no opposition or had no position to take in having a capias issued.
>
> Q. At that time, did you indicate that you were going to withdraw as counsel?
>
> A. I may have said something along the lines of I would like to or I felt I should

since I had not heard from the guy in six months. That was not in the Courtroom though, as near as I can recall, and I never acted upon it.

(Tr.II:66-67)

Appellant testified that he took Attorney Walters at his word when he indicated that he was withdrawing as Mr. Pack's Counsel and in that regard was chided by Appellee's Counsel for having "taken the word of an Attorney:"

Q. Okay. Turning our attention to the Pack matter, there is no question that Eric Walter was attorney of record for Mr. Pack, is there?

A. Was, no. There is no question of that.

Q. There is no question that he remained so until well after January 22?

A. That is not true.

Q. What caused him to not be attorney of record before January 22?

A. His representation to me that he with drew.

Q. Mr. Billman,as an attorney, you surely are not asking us to believe that an attorney's offhand statement in the hall that he may withdraw constitutes withdrawal from a case.

A. When I make a representation to an officer of the Court such as a Prosecutor, sir,I carry through with my representation and I normally rely on anything an an attorney says to me involving litigation, yes sir.

(Tr.II: 249-250

The Witness Interview

Appellant went to the Franklin County Jail at approximately 9:30 P.M., January 22, 1980 in response to a message received at that time that Mr. Pack wanted to see him and at all times acted in a straight forward manner -- there was no duplicity or trickery involved. Mr. Pack was informed by a Jailer that Attorney Billman was there to see him (Tr.II-139). The Sergeant In Charge at the Jail asked Mr. Pack if he wanted to see Attorney Billman (Tr.II-139) further advising him that the Attorney had a tape recorder (Tr.II-140) and was going to record the entire interview. Prior to conducting any interview Mr, Billman asked Mr. Pack if he wanted an attorney present. (Tr.II-140) and was advised that he did not. No promises were made to Mr. Pack and the Trial Lawyer made it clear that he was representing Mr. Rife (Tr.II-141). A review of the transcript of the interview shows quite clearly that Mr. Pack was under no compulsion to make any statements. In addition Mr. Billman gave the Witness an opportunity to tear up the trans-

cript when it was presented to him four days later, Mr. Pack signed and initialed each page of the transcript and swore to the truthfulness of its contents before a disinterested notary public.(Tr.II-142) indicating he had no desire to tear it up.

Mr. Pack testified that the reason he made incriminating statements was because he felt a responsibility to assist Mr. Rife who "got sent up for something he didn't do" (Tr.II-141). Mr. Pack testified at the hearing on the motion for a new trial in a manner consistent with the interview he gave to Attorney Billman -- at which time he rejected the Trial Judge's advice that he have Counsel present. He again affirmed his testimony when he pled guilty at his own trial. He once again affirmed his testimony at the Disciplinary Hearing. (Tr.II-143).

Q. On the way back to the interview room, did Mr. Billman ask you if you wanted to have your attorney present?

A. Yes.

Q. What did you tell him?

A. I told him, "No," I didn't want nothing to do with him.

Q. Why did you tell him that?

A. Because, like I said before, he didn't try to help me out. I didn't think he was trying to help me out them, so I didn't want him to try to help me this time.

* * *

Q. Why did you say those statements incriminating yourself?

A. Well, for one reason. Joe got sent up for something he didn't do because -- and it was my responsibility to try to get him out since he wasn't there with me that night is all.

(Tr.II: 140-141)

Disciplinary Rule 7-104, Communicating With One Of An Adverse Interest, is designed for the protection of the one communicated with and it is not intended for the "benefit of" an Attorney who claims to be representing a party he has not seen for over eight months. That the party doing the communicating with the other Attorney may waive and otherwise negate his right to have Counsel present. Upon such facts as presented here -- when the "client" appears before a Panel of the Grievance Committee -- being brought to the hearing voluntarily from his Prison Cell -- and testified that he desired to talk to the

Trial Lawyer and did not want any attorney present "for his benefit" the charge should have been dismissed.

2. "The Board finds that the Respondent did represent C. Kay Block prior to December 26, 1979, and that as a result of such representation an intense fee dispute arose. The dispute was reported to the Columbus Bar Assn. by C. Kay Block and in answer to the complaint, the Board finds that the Respondent did reveal and did offer to reveal confidential information which he had received in the course of his representation of his Client."

The complaint involving Ms. Block -- who the Trial Lawyer represented briefly in a contested divorce action filed by her Husband -- was brought by the Appellee CBA against the Lawyer for having sent them a copy of a letter to Ms. Block answering a complaint which she had lodged with the Bar after the Lawyer terminated her representation. The matters about which Ms. Block complained did not ripen into a formal complaint but the defense which the Appellant made was seized as an "unethical disclosure of confidential information."

Disciplinary Rule 4-101 requires a Lawyer to preserve the confidences and secrets of the Client however one clearly recognized exception is when a client voluntarily communicates to a Bar Association questions or allegations against the Lawyer's professional ability. The Rule itself recognized at DR 4-101(C)(4) that:

> "A lawyer may reveal ... confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct."

This explicitly recognized exception to the duty to preserve confidences and secrets was commented upon by the U.S. Court of Appeals for the Second Circuit in *Meyerhofter v. Empire fire & Marine Ins. Co.* 497 F.2d 1190 (2d Cir.,1974) The Court exonerated an Attorney who had submitted a thirty-page affidavit accompanied by some sixteen exhibits which involved matters within the scope of the attorney-client privilege. The attorney in the case prepared the affidavit to rebut allegations charging him fraud. The Court in *Meyerhofter*, at 1195, held:

> "Under these circumstances ...(the Attorney) had the right to make an appropriate disclosure with respect to his role in the ... (matter). Concomitantly he had the right to support his version of the facts with suitable evidence."

Correspondence with a Bar Association -- provided at their request and in defense of matters brought to their attention by the Client -- should not be considered in the same light as making "public disclosures" of confidential matters. In questioning on cross-examination by Appellant's Counsel Ms. Block indicated that the disclosures made in the letter to her -- a copy of which went to the Bar Association -- were not disclosed to anyone else and she received her divorce without difficulty in that regard:

> Q. So, you sent the letter to the Bar Association and you received this response from Mr. Billman?
>
> A. Yes.
>
> * * *
>
> Q. And you have no knowledge that anything in this letter, Relator's Exhibit 15, was ever revealed to anybody other than the Bar Association?
>
> A. No.
>
> (Tr.I:160)

Appellant had a right to defend himself. Charges had already been filed against him. Ms. Block brought the Appellee into the matter of her professional relationship with her Attorney. Ms. Block testified that one of the reasons she sent a copy of the letter to the CBA was that she didn't agree with her Attorney's conduct. (TR.I-150). The attacks upon Appellant's reputation and method of handling her case are much more than a mere "fee dispute." She invited a response by sending her letter to the CBA and he was justified in defending himself. The need for Attorney Billman to defend himself against her charges was brought out in the examination of Ms. Block by the Panel Chairman, where it developed that the "profanity" involved in the discussion between the Attorney and the Client was uttered by Ms. Block and not the Trial Lawyer, (TRI-164). She admitted she could have said as reported by Appellant "whose f------ attorney are you anyhow, I'll tell you what to do," (Tr.I-158), when he refused to prosecute the divorce action in the manner in which she

demanded -- it should be pointed out that the Appellant never revealed the complete details of her demands which he considered unethical, if not illegal.

3. "The Board finds that Respondent represented Joseph C. Jenkins in certain Domestic Relations actions and that Respondent did communicate directly with Ruth S.(Jenkins)Lillie, the adverse party during such representation. It was difficult for the Board to determine who called whom. However the nature of the response of the respondent to Ruth S.(Jenkins)Lillie was far beyond a mere explanation of the Attorney-Client relationship ...".

The Panel of Commissioners found it "... difficult ... to determine who called whom..." therefore the evidence was insufficient to convict the Appellant of such a serious charge.

On direct examination Ms. Jenkins (AKA Lillie) testified that it was she who telephoned the Attorney's Office upon the "instructions" of her Attorney:

Q. Did there come a time in September of 1978 when your attorney ... asked you to call Mr. Billman's Office?

A. Yes, he did.

(Tr:I-173)

In an attempt to clarify the most confusing testimony of Ms. Jenkins as given at the Hearing a Member of the Board inquired of Ms. Jenkins:

> Q. You mentioned that Mr. Billman called your home one day three or four times. How did you know it was Mr. Billman?
>
> A. He told me it was Mr. Billman.
>
> Mr. BERGER: Okay, That is all.
>
> (Tr.I:207)

In an effort to support the charge the CBA sought to "cure" this evidenciary defect -- as established by Mr. Berger -- by sheer volume and improper testimony. Ms. Jenkins' present husband Jerome Lillie -- who was living with her at the time of the calls -- testified that on one occasion he answered the phone and the caller identified himself as "Mr. Billman" (Tr.I:211) however admitting he had never met Attorney Billman therefore could not recognize his voice. It was not shown that either Ms.Jenkins or any of her witnesses recognized Mr. Billman's voice.

Appellant admitted that on one brief occasion he talked to Ms. Jenkins relative to a clarification of the time Mr. Jenkins was to pick

up his children -- being the conversation specifically authorized by Ms. Jenkins' Attorney. Such a matter is not even within the subject of representation contemplated by DR7-104(A)(1).

Appellant's testimony that Ms. Jenkins was continuously attempting to telephone him and converse with him at Court was supported by a disinterested witness -- the employer of Mr. Jenkins -- who happened to view Ms. Jenkins' behavior at Court. The Employer testified:

> Q. And Sharon Jenkins was present in the (Courthouse) at this time?
>
> A. She was over by the Courtroom. The Court we were in had a cubicle over by some elevators which is where we were. Sharon, her mother, and the lawyer were over by the Courtroom door and Sharon kept approaching Mr. Billman ... She kept coming up to him and trying to pursue a conversation and he kept telling her that he would talk only to her lawyer.
>
> Q. Did her lawyer ever come and speak with Mr. Billman?
>
> A. No, he didn't.
>
> Q. Did Sharon persist in this course of conduct?
>
> A. Yes, she came up at least four or five times.

Q. Did Mr. Billman speak to her?

A. No. He said, "Sharon, go talk to your lawyer."

Q. Did she evidence any sort of reaction after he said that?

A. She was angry ...

* * *

Q. From your observations, it was clear to you that she appeared to be angry or upset?

A. It was obvious she was angry. People you know, did turn to the tone of her voice, but as far as her terminology, I don't know if she cussed or not.

* * *

Q. Did Mr. Billman ever push or shove Sharon?

A. No, he did not.

(Tr.II:162-167)

The complaint by Ms. Jenkins is the product of a woman seeking her "pound of flesh" for having been defeated in accomplishing her desires in a divorce due to the competency of Attorney Billman. In these proceedings it was Mr. Jenkins who was awarded the divorce during which it was uncovered that Ms.Jenkins was possibly committing fraud when Attorney Billman discovered conflicting affidavits signed by Ms.Jenkins indicating

that the Children were not living with her in Franklin County but were living with their Grandmother in Union County -- both were receiving welfare payments, (Tr.I:202-204).

4. "IT IS THE OPINION OF THE BOARD THAT THE RESPONDENT ACTED WITHOUT AUTHORITY IN FILING THIS FORECLOSURE ACTION ...".

Appellant admitted that on November 2, 1978 he filed a Complaint For Foreclosure. The action being based upon an unsatisfied judgment for unpaid child support entered on September 23, 1977 which however did not become final until shortly before the foreclosure filing due to pending appeals. The judgment had been secured as a result of the efforts of Appellant in complete compliance of his obligations assumed under a Contingency Fee Contract dated Feb. 16, 1977. The party represented was Ms. Boyer (AKA Mason) who at the time the contract was signed was Appellant's Secretary.

On the day the foreclosure action was filed Ms. Boyer was no longer employed by Appellant

having voluntarily terminated that relationship on September 22, 1978 although contact was maintained as she made a number of visits to Appellant's office during October of 1978 to finish up work and to brief the Trial Lawyer's new Secretary on books and records. The matter of the foreclosure action was discussed and it was agreed that such would be filed that Fall. On October 21, 1978 Ms. Boyer's automobile was repossessed for non payment of the auto loan payments resulting in a substantial loss to Ms. Boyer and Appellant -- who by virtue of having co-signed on the loan as a benefit of employment, he had to pay the deficiency.

On December 29, 1978 while Appellant was taking steps to finalize the foreclosure action he learned that after the loss of her automobile Ms.Boyer began negotiating directly with her former husband and his former attorney to settle the moneys due under said judgment directly to her at the exclusion of her Attorney's contractural interest.

Appellant later learned for the first time in a deposition of Ms.Boyer on Feb. 18, 1980 in preparation for the Disciplinary Hearing that on Nov. 13,1978 she had contacted Appellee CBA and advised them that she had not authorized the filing of the foreclosure action on Nov. 2, 1978 -- this was all without notice to Appellant by Ms.Boyer or Appellee. Ms. Boyer testified that she had terminated Attorney Billman's representation of her on Oct. 21, 1978 -- the day her automobile was repossessed -- however Appellant denied that any conversation regarding representation occurred that day when she was upset over having been unable to sell the automobile or otherwise bring the payments current.

A "letter of discharge" dated Oct. 26, 1978 (Ex.5) was also introduced as being the date of discharge, however Ms. Boyer admitted that she had no proof that Attorney Billman ever received said letter, (Tr.I:102) Appellant admitted seeing the letter -- in late Dec. 1978 -- when he sent his Law Clerk to examine the Court Of App-

eals file in another case involving Ms.Boyer upon receiving notice from that Court indicating that at the request of Ms. Boyer an appeal had been dismissed, (Tr.II:213). No pleadings or motions were filed in the foreclosure action by Ms. Boyer or anyone acting on her behalf although she testified that she had retained an Attorney in the Fall of 1978 however he never filed anything with the Courts or otherwise gave notice of representation to Appellant. Appellee never called any such Attorney to testify.

December 29, 1978 Appellant placed a phone call to the Attorney who had represented Mr. Mason in a Domestic Relations Court matter in an effort to determine whether he, Michael Brandt, was representing Mr. Mason in the foreclosure action. Appellant was advised by Attorney Brandt that Ms. Boyer had been in his Office in November and "settled" the matter and therefore no representation was needed.

With this information -- this Trial Lawyer's interest in the judgment was being extinguished

-- Appellant on Jan. 2, 1979 filed a Notice of Assignment of the Judgment and served on all interested persons. Thereafter filing various pleadings seeking to have himself substituted for the named Plaintiff, Ms. Boyer so that he could protect his fees -- this being done simultaneously while withdrawing as Counsel for Ms. Boyer.

The testimony of Attorney Brandt -- presented in an attempt to establish his charge that Appellant had communicated with "his" client "knowing" that he, Mr. Brandt was representing that individual,[6] established conclusively that Att. Brandt was negotiating a settlement, of the judgment owed by "his client" Gerald Mason, directly with Ms.Boyer, AKA Mason at the exclusion of Appellant's interest and without respecting this Trial Lawyer's position as"Attorney of Record". Mr. Brandt testified upon cross-examination by Appellant's Counsel that in Nov. of 1978 Ms.Boyer visited with Attorney Brandt at which time an Affidavit was

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6. Appellant was found "not guilty" of this charge.

prepared reflecting the terms of a settlement -- two such affidavits prepared by Att. Brandt were introduced into evidence as Trial Lawyer's Exhibits O and P (Tr.I:256-258 and Tr.II:6-9).

Case Law Supports Appellant

The Ohio Trial Lawyer attempted to present to the Ohio Supreme Court case law supporting his continuing the case notwithstanding his lack of notice that his Client "did not desire to proceed." The first affirmative action taken in the case to give notice to the Court or the Trial Lawyer of the "settlement" was by way of a Motion To Dismiss filed on Jan. 4, 1979 by Att. Brandt supported by the Jan. 3, 1979 Affidavit of Ms.Boyer -- no explanation was given as to "why" the Nov.'78 Affidavit was not used -- this affidavit like its predecessor indicated that Ms. Mason was no longer "desirous" ... to foreclose on her Judgment Lien" because: "... Gerald Mason has been making regular payments through the Court of Common Pleas, Div. of Domestic Relations, part of

which payments are going toward this judgment."

The Ohio Supreme Court had previously held in regard to an Attorney who is representing a client under a contingency fee contract, in *Bolton v. Marshall* 153 Oh St 250,(1950):

> "An attorney under a contingent fee contract agrees to accomplish a particular piece of work and to prosecute it to completion and such a contract is ordinarily not revocable by the client ...".

If a contingent fee contract is not revocable by the client after full performance by the Attorney then it is contended that the same client lacks standing to dismiss an action brought to collect the judgment, achievieved by the efforts of said Attorney, a portion of which has been assigned to said Attorney which dismissal is *per se* prejudicial to the Lawyer's inteest. Under such facts it would be unfair to charge the attorney attempting to do what he believed he had authority to do by his Client under verbal instructions supported by a written contract with being "unethical" or committing an "ethical impropriety"

when the attorney aiding her in this fraud is permitted to walk away -- this would be the epitome of hypocracy.

Appellee had also charged that it was unethical and a violation of the Cannons Of Ethics for Appellant to attempt to continue the case on his own and thereafter attempt to appeal the denial of his application to intervene. This question was reviewed by the Supreme Court of Florida in *Mabry Et Al. v. Knabb*,10 So.330, (1942) which held:

> "According to the weight of authority where the client makes a fraudulent or collusive settlement intended to deprive the attorney of his compensation ... the attorney will be permitted to proceed with the suit in the client's name for the purpose of protecting his interests."
>
> *Mabry Et Al. v. Knabb, Supra*, Supra, 337.

The Court in *Mabry* specifically spoke to the situation where a party dismissed the action and settled that Party's claims against the other all at the exclusion of the Attorney. The Court held that the trial court must act to protect the attorney "... as one of its

officers ..." by setting aside the order of dismissal and permitting the Attorney to continue "... the cause in the name of his client ...", *Mabry Et Al. v. Knabb, supra,* 337.

The Supreme Court of Florida described behavior as occurred here as "fraud" stating that to settle a case in the face of the Attorney's lien is to "cheat" the Attorney and the trial court must act to protect the attorney in such a situation. The Court reviewed the law in states where the interest of the Attorney is protected by "lien statutes" however held the law was equally applicable where there is no statute:

> "So also, at common law, without the intervention of the statute, it has been the practice of courts to intervene to protect attorneys against settlements made by their clients to cheat them ... . If an attorney has commenced an action, and his client settles it with the opposite party before judgment collusively, in fraud of his rights ... the court will permit the attorney to go on with the suit for the purpose of collecting his costs."
>
> *Mabry Et Al. v. Knapp, Supra,* 337.

The Florida Supreme Court in *Sentoo, v. Mc. Culloh,* 84 So.2d 498 (1956) reaffirmed its

holding in *Mabry* in a case before it on appeal by a party's attorney. Further authority for a Trial Lawyer to proceed as Appellant did here if found in New York and West Virginia. See: *Citizens Bank Of White Plains v.Oglesby*, 58 N. Y.S. 2d 591,(1945),and *In Re Werkman's Will*, 13 S.E. 2d 73,(1941).

The U.S. Court of Appeals for the District of Columbia has held that "... an attorney under a contingent fee contract is vested with an interest in the cause of action" and when he is discharged that Attorney may proceed with the action. In the case of *Evans v. Ockershausen*, 100 F.2d 695, at 709 (Ct.Of Appeals,D.C.,1938) *cert den* 306 U.S.633 (1939), the Court held:

> "We have held that an attorney dismissed without charge of misconduct will be protected by the court ...an attorney under a contingent fee contract is vested with an interest in the cause of action which entitled him to intervene in the suit to protect it; and that he may appeal to protect his interest."

Appellant acknowledged that the majority of the case law cited was not of Ohio however prayed that the Ohio Supreme Court would find

that an attorney who presents views of Courts of sister States -- although he may not prevail in arguing that such judicial opinion be followed -- is not thereby bringing disrespect to the Profession. The Ohio Supreme Court found this behavior unethical and reprimanded him.

Ms.Boyer's Motive

In making an analysis of any complaint lodged by Ms. Boyer it is necessary to make an analysis of her motives. As the Panel observed she was "oft-married" -- married and divorced five (5) times -- and she was "... half in love with Mr. Billman ...". (Tr.I:77) when she filed her charges with Appellee. When the Appellant Attorney began to recognize that Ms.Boyery's interests were more in her Employer than the needs of his Clients her departure was "agreed upon." The Appellant may have failed to recognize the wisdom of Sir William Congreve who observed:

> "Heav'n has no rage,like love to hatred turned Nor Hell a fury, like a woman scorn'd." *Hamlet, Act.5, Scene 2.*

CONCLUSION

"... Lawyers are involved in a contentious profession. In litigation somebody's always going to be the loser, and that creates acrimony ... Lawyers deal with restraints on human action, the rules of society. People don't like to be restrained. It creates resentment."

... W. Reece Smith, Jr.
President, AMERICAN BAR ASSOCIATION, *U.S. News & World Report, Vol. LXXXIX, No. 22, Page 45, Dec.1, 1980.*

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully Submitted,

DONALD LYNN BILLMAN
915 South High Street
Columbus, Ohio 43206

COUNSEL FOR APPELLANT

APPENDIX

THE STATE OF OHIO, : City Of Columbus. :	SS	The Supreme Court of the State of Ohio of the Term of Jan.1981 To-wit: March 4, 1981
The Columbus Bar Assn., Relator, v. Donald Lynn Billman, Respondent.	: : : : : :	ON CERTIFIED REPORT BY BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE DD No. 80-15

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on November 5, 1980, recommending the respondent, Donald Lynn Billman, be publicly reprimanded pursuant to Section 6(c) of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio; and it further appearing that objections were filed to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued before the court. On consideration thereof it is ordered and adjudged by the court that the Final Report of the Board of Commissioners on Grievances and Discipline be, and the same hereby is, confirmed and this entry shall constitute the public reprimand provided, however,

that should the respondent, Donald Lynn Billman, be found guilty of subsequent misconduct, he shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such conduct.

It is further ordered that respondent, Donald Lynn Billman, pay the costs of these proceedings taxed in the amount of Two Thousand Seven Hundred Ninety Seven Dollars and fifty-three cents ($2,797.53).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 20 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

Approved: */s/ Frank D. Celebrezze* CHIEF JUSTICE

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of this Court, to wit, from Journal 57.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 4th day of March, 1981.

THOMAS L. STARTZMAN CLERK

/s/ Sam F. Adkins DEPUTY

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In re:	:	CASE NO. 346
Donald Lynn Billman,	:	*(Filed Nov.5, 1980)*
Respondent,	:	Findings of Fact
Columbus Bar Association:		and Recommendation of
Relator.	:	the Board of Commiss-
	:	ioners on Grievances
	:	and Discipline of The
	:	Supreme Court of Ohio

This cause was heard at Columbus, Ohio on June 2 and June 3, 1980 before the duly appointed hearing panel of the Board of Commissioners on Grievances and Discipline.

Respondent was present and represented by Attorneys David J. Young and Kevin R. McDermott of Columbus, Ohio, and Relator was represented by Attorneys Mary Ellen Fairfield,Bruce Campbell and Thomas E. Workman of Columbus, Ohio.

At the request of the respondent, the hearing was conducted in private.

The panel found that the respondent had been an engineering student at Ohio State University, was a graduate of Wittenberg University, a graduate of the University of Toledo Law School, a recipient of the Norman E. Jameson Literary Award,

a member of the Bar of the Supreme Court of the State of Ohio and further that the respondent had in the past taught school,worked as a Deputy Sheriff in Clark County, Ohio, served as an Assistant Attorney General in the State of Ohio, was trial counsel for the Department of Rehabilitation and Correction, an Onsite Hearing Officer for the Adult Parole Authority and that he had begun his private practice in June of 1976.

Sidney Harold Golden, Judge of the Franklin County Municipal Court, testified that he was impressed with the respondent as he gave a very fine impression as an officer of the court and that he would give the respondent a very high rating as an officer of the court.

George E. Tyack, Judge at the Common Pleas Court of Franklin County testified that he considered the respondent a competent and dedicated practitioner.

George F. Denton, Director of the Department of Rehabilitation and Correction, testified that he rated the respondent as the most dedicated administrative lawyer that has been assigned to the department or to any administration that he had responsibility for, and that the respondent was, in his opinion, held in high esteem by the managing officers of the institutions.

Richard R. Schnurr, Department Head at St. Anthony Hospital and the Executive Director of

Talbot Hall, an alcohol treatment center, testified that in connection with a certain trial, he was very much impressed with the length that the respondent went in his preparation previous to the trial,his conduct during the trial and his zealousness on how he handled the entire case; further,that as a result,that he had recommended to the Administrator of the hospital that the respondent be asked to serve on the advisory board for his department at the hospital.

George A. Hartman, Senior Pastor at St. John Evangelical Lutheran Church at Grove City testifield that the relator is a deeply religious and active member of the Church.

The charges are:

COUNT ONE

On December 17, 1976,respondent made a personal loan of One Hundred Eighty-five Dollars Ten Cents ($185.10) to Beverly S. Boyer and Ms.Boyer in return executed a promissory note drafted and witnessed by respondent.

Subsequently,on December 23,1976 and February 18,1977,May 14, 1977,July 8, 1977,September 3,1977, and October 15, 1977,respondent made additional personal loans to Ms.Boyer,all of which are listed on such promissory note.

Such promissory note is by its express terms "secured by the moneys which may be collected in the actions to collect arrearages on child support due in the matter of BOYER v. MASON, Case No. 100, 061; BOYER v. POWERS, Case No.114666 and any such money judgment collected as a result of the efforts of said attorney."

On January 2, 1977,Ms.Boyer became a full-time employee of respondent and served as his secretary.

On February 16, 1977,after respondent had begun making personal loans to Ms.Boyer, he entered into an attorney's representation agreement with Ms.Boyer wherein he agreed to prosecute an action against a former husband of Ms.Boyer for "money due upon child support order from 1961 to present."

Under such representation agreement,respondent was to receive a 50% contingency fee and by the terms of the form agreement respondent was to receive an undivided 50% interest in and to the action for back child support.

On September 23, 1977,a judgment was entered in favor of plaintiff,Ms.Boyer, in Mason v. Mason,Case No. 100,061 by the Domestic Relations Division of Franklin County Court of Common Pleas,and according to documents recently filed in the Tenth District Court of Appeals by respondent,such judgment became final on July 6, 1978 after appeals through the Ohio Supreme Court.

On August 10,1978, respondent filed a certificate of judgment to secure such judgment.

By a letter to respondent dated August 18, 1978,Ms.Boyer indicated her desire not to foreclose on Gerald E. Mason's home.

On September 23,1978,Ms.Boyer's employment by respondent terminated.

According to Ms.Boyer, at 6:30 p.m.on October 21, 1978 she terminated the attorney-client relationship with respondent and she also discharged respondent by her letter of October 26, 1978.

On October 23, 1978,Ms.Boyer appeared at the Franklin County Municipal Court with the apparent intention of testifying against respondent in a criminal case filed by Ms.

Barbara Blair against respondent for assault.

On November 2,1978, respondent filed a foreclosure action against Gerald E. Mason to execute on the judgment entered on September 23,1977, for back child support.

Such foreclosure action was styled BEVERLY F. BOYER (Plaintiff) v. GERALD E. MASON (Defendant) and listed respondent as counsel for plaintiff.

On December 21, 1978,respondent took a default judgment against the defendants in the foreclosure action.

On December 29, 1979,respondent telephoned Attorney Michael T. Brandt to determine whether Mr.Brandt still represented Gerald Mason allegedly to determine whether a settlement short of a judicial sale was possible in this action.

On January 2, 1979,respondent filed in the Common Pleas Court a "Notice of Assignmemt of Judgment" to which he attached and marked "Exhibit A" a copy of what purported to be the contingent fee agreement signed by Beverly F. Boyer referred to in paragraphs 7) and 8) above, but which, in fact, had,to respondent's knowledge,been materially altered and which was a false copy thereof.

On January 25,1979, Judge G.W. Fais set aside the default judgment at a hearing where Ms.Boyer, the person named as plaintiff in the action, was represented by Attorney Ralph Thomen,Gerald E.Mason, the defendant,was represented by Attorney Michael T.Brandt, and respondent appeared allegedly to protect his financial interest in the foreclosure action.

On February 20, 1979,the court approved an entry of dismissal prepared by plaintiff Boyer's counsel,Ralph Thomen, thereby

dismissing the foreclosure action originally filed by respondent.

On March 19, 1979,respondent filed a notice of appeal in the Tenth District Court of Appeals appealing the dismissal of the foreclosure action by plaintiff Boyer.

On May 22,1979,respondent filed an appellate brief in Case No. 79 AP 201 representing himself throughout such brief as counsel for the appellant (Beverly S. Boyer) and referring to himself throughout such brief as "Appellant."

In an Appendix filed with the foregoing Brief respondent included an "Exhibit A" thereof what purported to be the contingent fee agreement signed by Beverly F. Boyer referred to in paragraphs 7) and 8) above,but which,in fact, had,to respondent's knowledge, been materially altered and which was a false copy thereof.

On page 8 of appellant's amended brief he states that "the sole purpose" of the foreclosure action was to collect the moneys assigned to him under the attorney's representation agreement executed in February of 1977.

The attorney-client relationship between respondent and Ms.Boyer no longer existed on November 2, 1977 and,therefore,respondent acted without authority in filing such foreclosure action in violation of Disciplinary Rule 2-110 (B)(4).

By the personal loans respondent made to Ms.Boyer prior to and during his representation of Ms. Boyer in the action for back child support,respondent acquired a propriety interest in a cause of action or subject matter of litigation he was conducting for a client in violation of Disciplinary Rule 5-103 (A).

While representing Ms.Boyer in connection with the action for back support, respon-

dent advanced or guaranteed financial assistance to his client in violation of Disciplinary Rule 5-103 (B).

By submitting false and altered documents to two courts respondent violated Disciplinary Rule 1-102 (A)(4),(5) and (6) and Disciplinary Rule 7-102 (A)(4) and (6).

COUNT TWO

The allegations contained in Count One of this complaint are incorporated herein by reference and are to be considered as fully restated in Count Two.

On January 2, 1979 respondent sent a letter to G.W.Fais regarding the foreclosure action against Gerald Mason and contemporaneously mailed a copy of such letter to Mr. Mason and a separate copy to Mr. Mason's counsel, Michael T. Brandt.

Also on January 2, 1979 respondent sent a letter to Attorney Michael T. Brandt regarding such foreclosure action and contemporaneously mailed a copy of such letter to Mr. Brandt's client, Mr. Mason.

On January 3, 1979 respondent sent a letter to Gerald E. Mason regarding the foreclosure action against Mr. Mason.

From respondent's telephone conversation with Attorney Michael T. Brandt on December 29, 1978,respondent knew that Gerald Mason was represented by Michael T. Brandt when respondent corresponded with Mr. Mason on Janury 2, and 3,1979.

Therefore, while acting as counsel for the plaintiff in the subject foreclosure action respondent communicated on three separate occasions with a party,Gerald E.Mason, whom respondent knew to be represented by a lawyer in that matter and respondent was without authority to do so. Thereby respondent violated Disciplinary Rule 7-104 (A)(1).

COUNT THREE

While representing Joseph C. Jenkins in domestic actions in the Franklin County Court of Common Pleas, Division of Domestic Relations,respondent communicated directly with Ruth S. (Jenkins)Lillie, the adverse party,on several occasions knowing that she was represented by Attorney H. Ritchey Hollenbaugh, Ms.Lillie alleges that respondent telephoned her at her home three times on November 1, 1978 and once on December 20, 1978.

During one such telephone conversation,Ms. Lillie alleges that respondent threatened her saying that if she did not get off welfare and reduce the child support payment obligation of her husband, she would not get a divorce.

Respondent admits that he telephoned Ms. Lillie on November 4, 1978.

During the course of respondent's representation of Joseph C. Jenkins, respondent communicated on the subject of the representation with Ms.Lillie,a party he knew to be represented by a lawyer in that matter and he was without authority to do so. Thereby respondent violated Disciplinary Rule 7-104 (A)(1).

At a court hearing on August 8, 1978 Ms. Lillie alleges that respondent physically assaulted her by pushing her against a wall. Thereby respondent violated Disciplinary Rule 1-102 (A)(6).

COUNT FOUR

While respresenting Arthur Blair in a divorce action,respondent on July 20,1978 accompanied Mr. Blair to his home where Ms.Barbara Blair was then residing.

At one point during that visit respondent physically shoved Ms. Barbara Blair against a door. Thereby respondent violated Disciplinary Rule 1-102 (A)(6).

COUNT FIVE

Prior to December 26, 1979, respondent entered into an attorney-client relationship with one C. Kay Block, and in the course thereof learned certain confidential information concerning said client.

Thereafter, and without permission or justification, respondent breached the confidentiality of said client by causing a copy of a letter to the client to be sent to a third party, The Columbus Bar Association, after these proceedings were originally instituted and respondent had filed an answer to the complaint, and in said letter threatened Ms. Block with further breaches of the attorney-client confidentiality to the disadvantage of the said client and to the advantage of the respondent.

Respondent has, by these actions, violated Disciplinary Rule 4-101 (B)(1), (2) and (3).

COUNT SIX

The allegations contained in Counts 1 through 5 of this complaint are incorporated herein by reference and are to be considered as fully restated in Count Six.

By the acts of respondent described in paragraph 43, respondent has violated Disciplinary Rules and has engaged in conduct that adversely reflects on his fitness to practice law. Thereby respondent has violated Disciplinary Rules 1-102 (A)(1) and 1-102 (A)(6).

COUNT SEVEN

Respondent on or about March 9, 1979 undertook the representation of one Timmy Joe Rife with respect to felony charges pending against him in the Common Pleas Court of Franklin County (Case #79 CR-02-294A).

Attorney Eric W. Walter of the Franklin County Public Defender's Office was assigned to represent a co-defendant on the same indictment, James Pack.

During the time the cases were pending from the time of arraignment on March 9, 1979, until they were terminated in January, 1980, respondent had knowledge that Defendant Pack was represented by attorney Walter.

On or about June 12, 1980 respondent prepared an entry of continuance, ... presented same to attorney Walter for approval as attorney of defendant Pack and filed the entry with the court.

These cases were scheduled for trial on January 7, 1980 and a notice, ... was mailed by the court to counsel. On that date respondent and attorney Walter appeared to represent their respective clients. Walter's client, Pack, however, did not appear, and a capias was issued for his arrest. Defendant Rife went to trial and was convicted.

On or about January 22, 1980 defendant Pack was arrested and taken to the Franklin County Corrections Center. On that date, without notice to or authority from attorney Walter, respondent visited Walter's client, Pack, in the jail, and engaged him in a tape recorded interview during which Mr. Pack exculpated Rife but inculpated himself.

Respondent had the interview with Pack transcribed and, on January 28, 1980, without notice to or authority from Pack's attorney filed the transcript as an exhibit to a Motion for New Trial in Rife's case.

Therefore while acting as counsel for the defendant in a criminal case, respondent communicated without authority with a co-defendant of adverse interest knowing said co-defendant to be represented by counsel on the subject of said representation in violation of Disciplinary Rule 7-104 (A)(1).

The Board finds that Exhibit 1 sets forth a certain promissory note dated December 17, 1979, signed by Beverly S Boyer and witnessed by the respondent stating that it was ". . . Secured by the moneys which may be collected in the actions to collect arrearages on child support due in the matter of BOYER v. MASON,Case No. 100,061; BOYER v. POWERS, Case No. 114666 and any such money judgment collected as a result of the efforts of said attorney."

The office relationship of the respondent, the oft-married Beverly S. Boyer and the respondent's mother was very confusing. However, by letter dated August 18, 1979 Beverly S. Boyer sets forth her desire not to foreclose on the Gerald E. Mason home. After the incidents on or about September 23, 1978, which involved the termination of Beverly S. Boyer's employment and the dispute over the ownership of her automobile, all representation by respondent on behalf of Beverly S. Boyer apparently ceased. The termination of representation of respondent on behalf of Beverly S. Boyer was set out in her letter dated October 26, 1978.

On November 2, 1978 respondent filed a foreclosure action for Beverly S. Boyer against Gerald E. Mason and on January 2, 1979 respondent filed a Notice of Assignment of Judgment in the Common Pleas Court.

It is the opinion of the Board that the res-

pondent acted without authority in filing this foreclosure action in violation of DR 2-110 (B)(4) and DR 5-103 (A)(B).

On January 2, 1979 respondent sent a letter to Judge G. W. Fais regarding the foreclosure action against Gerald Mason and mailed a copy of such letter to Mr. Mason and a separate copy to Mr. Mason's counsel, Michael T. Brandt. On January 2, 1979, he also sent a letter to Attorney Michael T. Brandt and mailed a copy of such letter to Mr. Mason and on the following day, respondent sent a letter to Gerald E. Mason regarding the foreclosure action against him.

It is the findings of the Board that Attorney Michael T. Brandt did represent Gerald E. Mason in the support action but that he was not attorney of record in the foreclosure action. It is the finding of the Board that relator has not proved to the satisfaction of the Board that as of January 3, 1979, Attorney Michael T. Brandt had been retained to represent Gerald E. Mason in this particular foreclosure action.

The Board finds that the respondent represented Joseph C. Jenkins in certain domestic relations actions and that respondent did communicate directly with Ruth S. (Jenkins)Lillie, the adverse party during such representation. It was difficult for the Board to determine who called whom. However the nature of the response of the respondent to Ruth S. (Jenkins)Lillie was far beyond a

mere explanation of the attorney-client relationship and therefore, the Board finds that the respondent has violated DR 7-104 (A)(1).

At the hearing, there was testimony of the parties of some bumping of the parties, but the Board does not find that the respondent pushed Ruth S. (Jenkins) Lillie against a wall.

The Board finds that the respondent represented Arthur Blair in a divorce action and that on July 20, 1978 the respondent accompanied Arthur Blair to his home where Mrs. Barbara Blair was then residing. The respondent stated that he had authorization of the police officer of the community to accompany Arthur Blair to his home. The respondent stated that during the visit he was merely trying to protect his genitalia which movement caused Mrs. Barbara Blair to fall against the door.

The Board does not find sufficient evidence to sustain the allegations of the relator.

The Board finds that the respondent did represent C. Kay Block prior to December 26, 1979, and that as a result of such representation an intense fee dispute arose. The dispute was reported to the Columbus Bar Association by C. Kay Block and in Answer to the Complaint, the board finds that the respondent did reveal and did offer to reveal confidential information which he had received in the course of his representation of his client.

The Board finds that the respondent, by his actions, violated Disciplinary Rule 4-101 (B)(1)(2).

The composite of Counts 1 through 5 herein, in the opinion of the Board, reflects on the respondent's fitness to practice law and thereby the Board finds that the respondent has violated Disciplinary Rule 1-102 (A)(6).

The Board finds that the respondent, while representing one Timmy Joe Rife on a felony Charge in Case No. 79 CR-02-294A in the Franklin County Common Pleas Court, did contact James Pack who was represented by Attorney Eric W. Walter of the Franklin County Public Defender's Office, which representation was known by the respondent. The Board finds that on or about January 22,1980 without the approval of James Pack's attorney, the respondent interviewed James Pack and filed a transcription of the interview as an Exhibit to a Motion for a New Trial, knowing that at all times James Pack was represented by counsel. There fore the Board finds that the respondent has violated DR 7-104 (A)(1),

It is the recommendation of the relator's Professional Ethics and Grievances Committee that respondent be indefinitely suspended.

It is the finding of the Board that the respondent represents a very difficult group of clients and that such clients have continuously filed complaints with the bar associations.

The respondent is considered by many to be obdurate.

It is the recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court that the respondent, Donald Lynn Billman, be given a public reprimand.

/s/ George W. Coen/jm
Chairman, Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio

/s/ Coit H. Gilbert
Secretary, Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio.

IN THE SUPREME COURT OF OHIO

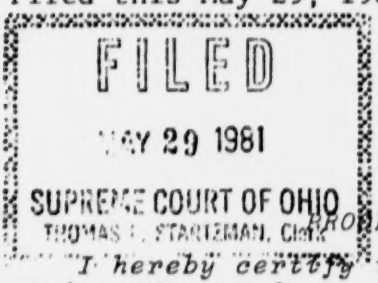
COLUMBUS BAR ASSOCIATION, :
Relator-Appellee, :
v. DD No. 80-15
DONALD LYNN BILLMAN :
Respondent-Appellant. :

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that DONALD LYNN BILLMAN, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Ohio, entering the sanction of public reprimand against this Attorney, entered in this action on March 4, 1981.

This appeal is taken pursuant to 28 U.S.C. Section 1257 (2).

Filed this May 29, 1981.



Donald Lynn Billman

DONALD LYNN BILLMAN
915 South High Street
Columbus, Ohio 43206
COUNSEL FOR RESPONDENT

PROOF OF SERVICE

I hereby certify that a file stamped copy of Notice Of Appeal was served upon Counsel For Relator, Bruce Campbell, Mary Ellen Fairfield & Thomas E. Workman, via the U. S. Postal System regular mail, this May 29, 1981.

Donald Lynn Billman

DONALD LYNN BILLMAN
Attorney At Law

OBJECTIONS PRESENTED *

Attorney DONALD LYNN BILLMAN, Respondent, says that his Objections to the Findings and Recommendation of the Board Of Commissioners On Grievances & Discipline as certified to the Supreme Court on November 5, 1980 are as set forth below:

I. IT WAS ERROR FOR THE BOARD OF COMMISSIONERS NOT TO HAVE FOUND THAT THEY LACKED JURISDICTION TO HEAR THE MATTER BY REASON OF THE EXCESSIVE DELAY EXHIBITED BY RELATOR IN INVESTIGATING AND PROCESSING THE CHARGES AS REQUIRED BY RULE V. SECTION 4 OF THE SUPREME COURT RULES AND AS GUARANTEED TO RESPONDENT BY THE GUARANTEE OF "DUE PROCESS" AND "FUNDAMENTAL FAIRNESS".

II. THE RESPONDENT'S RIGHT TO "FUNDAMENTAL FAIRNESS" AND HIS BASIC RIGHTS OF "DUE PROCESS" WERE VIOLATED UPON THE PREJUDICIAL JOINDER OF MULTIPLE COUNTS BEARING NOR RELATIONSHIP TO EACH OTHER IN TIME OR IN FACT.

III. THE FINDING THAT RESPONDENT ACTED WITHOUT AUTHORITY IN THE FILING OF A FORECLOSURE ACTION TO COLLECT A JUDGMENT WAS ERROR UNDER THE FACTS IN THIS CASE WHICH ESTABLISHED THAT HE WAS ACTING UNDER AUTHORITY OF A CONTINGENCY FEE CONTRACT WHICH HE HAD FULLY PERFORMED AND WHEN THE CLIENT'S DESIRE NOT TO PROCEED WAS NOT COMMUNICATED TO THE ATTORNEY AND SHE WAS ACTING AT THE EXCLUSION OF HER ATTORNEY'S INTEREST BY ENTERING INTO A SETTLEMENT AGREEMENT WITH THE ADVERSE PARTY AND HIS ATTORNEY.

**Appellant's "Objections" as they appeared at p. 2 & 3 of Appellant's (Respondent's) Objections & Brief filed with the Supreme Court of Ohio on Nov. 25, 1980 in response to that Court's Order To Show Cause.*

IV. THE FINDING THAT RESPONDENT COMMUNICATED WITH AN ADVERSE PARTY IN VIOLATION OF DR 7-104, WAS ERROR WHEN AS HERE THE EVIDENCE ESTABLISHED THAT THE ADVERSE PARTY, MS. SHARON JENKINS, TESTIFIED THAT SHE HAD CONTACTED THE RESPONDENT'S OFFICE UPON THE ADVICE OF HER ATTORNEY AND THAT AT HEARINGS SHE WOULD ATTEMPT TO ENGAGE RESPONDENT IN CONVERSATION -- WHICH HE POLITELY ATTEMPTED TO AVOID -- IN THE PRESENCE OF AND WITH THE APPARENT APPROVAL OF HER ATTORNEY.

V. THE FINDING THAT RESPONDENT REVEALED CONFIDENTIAL INFORMATION OF A CLIENT IN VIOLATION OF DR 4-101 (B) WAS ERROR WHEN AS HERE THE EVIDENCE ESTABLISHES THAT SUCH INFORMATION WAS BY WAY OF A RECITATION TO THE CLIENT WITH A COPY THEREOF TO THE RELATOR BEING PRESENTED IN SELF DEFENSE TO CHARGES WHICH SAID CLIENT MADE TO RELATOR AND THAT SAID INFORMATION WAS NOT COMMUNICATED TO NO ONE ELSE.

VI. THE FINDING THAT RESPONDENT VIOLATED DR 7-104 WHEN HE COMMUNICATED WITH A PARTY WHICH HE BELIEVED WAS NOT REPRESENTED BY COUNSEL WHEN THE SAID PARTY INITIATED THE INTERVIEW AND EXPRESSED HIS WILLINGNESS TO BE INTERVIEWED BY RESPONDENT FOR THE PURPOSE OF TESTIFYING FOR RESPONDENT'S CLIENT AND THAT THE RESPONDENT CONDUCTED THE INTERVIEW IN AN OPEN AND FORTHRIGHT MANNER BY INITIALLY TAPE RECORDING THE COMPLETE INTERVIEW THEREAFTER HAVING IT TRANSCRIBED AND PRESENTED TO SAID PARTY AFFORDING HIM THE OPPORTUNITY TO DESTROY SAME OR SWEAR TO ITS TRUTHFULNESS BEFORE AN UNINTERESTED NOTARY PUBLIC THEREAFTER FILING SAID TRANSCRIPT WITH THE COURT.

VII. THE PROVISIONS OF DR 7-104, "COMMUNICATING WITH ONE OF AN ADVERSE INTEREST", ARE FOR THE PROTECTION OF THE PERSON COMMUNICATED WITH AND NOT FOR THE INTEREST OF AN ATTORNEY WHO MAY CLAIM THAT HE HAD A RIGHT TO BE CONSULTED PRIOR TO SAID INTERVIEW. WHEN SAID PARTY APPEARS BEFORE A TRIAL JUDGE AND REJECTS THE

RECOMMENDATION THAT HE HAVE LEGAL REPRESENTATION BEFORE BEING INTERVIEWED BY THE RESPONDENT AND WHEN THE SAID PARTY APPEARS BEFORE THE BOARD OF COMMISSIONERS AND TESTIFIES THAT IT WAS HIS DESIRE TO TALK TO RESPONDENT FOR THE PURPOSE OF TESTIFYING FOR HIS CLIENT UPON SUCH FACTS A CHARGE OF VIOLATING DR 7-104 BY SUCH INTERVIEW SHOULD HAVE BEEN DISMISSED.

VIII. IN ORDER TO PROTECT HIS RECORD RESPONDENT WOULD REALLEGE THE DEFENSES RAISED IN HIS COUNSEL IN THE ANSWER TO THE SECOND AMENDED COMPLAINT THAT: (A) UNDER THE UNUSUAL FACTS OF THESE CHARGES THE DISCIPLINARY RULES WHICH IT WAS ALLEGED HE VIOLATED ARE UNCONSTITUTIONALLY VAGUE AND CANNOT SERVE AS THE BASIS FOR IMPOSING DISCIPLINE: (B) THAT THE ACTIVITIES DONE WERE PRIVILEGED: AND (C) IN REGARD TO THE CHARGE BY THE PUBLIC DEFENDER THERE WAS NO ALLEGATION OR PROOF THAT THE ACTS WERE WILLFULLY DONE IN DEFENSE OF HIS CLIENT WHOM HE BELIEVES TO HAVE BEEN INNOCENT OF THE CRIME OF WHICH HE WAS CONVICTED.

NO. 80-2045

Office-Supreme Court, U.S.
FILED
JUL 16 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

DONALD LYNN BILLMAN, Appellant,

v.

COLUMBUS BAR ASSOCIATION, Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

APPELLEE'S MOTION TO DISMISS AND ARGUMENT IN SUPPORT THEREOF

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IN THE SUPREME COURT OF THE UNITED STATES

Donald Lynn Billman,	:	
	:	
Appellant	:	
	:	
v.	:	Case Number 80-2045
	:	
Columbus Bar Association,	:	
	:	
Appellee	:	

MOTION TO DISMISS

Now comes the Appellee and, pursuant to Rule 16.1(b) of the Rules of the Supreme Court, moves that this case be dismissed because it does not present a substantial and properly raised federal question and because the judgment below rests upon an adequate non-federal basis.

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Ohio Revised Code Sec. 2505.21

RULES

Ohio Code of Professional Responsibility Section DR 7-104

Ohio Supreme Court Rules for the Government of the Bar, Rule V Sec. 4

Ohio Supreme Court Rules for the Government of the Bar, Rule V Sec. 38

TEXTBOOK

Wright, C.A., Law of Federal Courts 3rd Ed. (West; 1970)

OTHER

21 C.J.S. Courts (1940)

STATEMENT OF THE CASE

Appellant, a lawyer practicing in Columbus, Ohio, was charged by the Columbus Bar Association with numerous violations of the Ohio Code of Professional Responsibility arising out of Appellant's practice in this jurisdiction.

As is provided by rule of the Ohio Supreme Court, the matter was submitted for hearing to a Panel consisting of three members of the Board of Commissioners on Grievances and Discipline, a body created and appointed by the Ohio Supreme Court itself. The Panel held two complete days of hearing during which numerous witnesses testified and many exhibits were introduced. Appellant was represented by counsel during these proceedings.

After review of a complete transcript of the hearing and submission of extensive briefs by the parties, the Panel, on November 5, 1980, filed with the Ohio Supreme Court its Findings of Fact and Recommendation concluding that Appellant had:

1) acted without authority in filing a foreclosure action after having been discharged by his former client;

2) communicated directly with a party of adverse interest represented by counsel (two counts);

3) revealed confidential information received in the course of representing a client;

4) used a confidence or secret of client to the disadvantage of the client;

5) engaged in conduct adversely reflecting on his fitness to practice law.

The Panel recommended to the Ohio Supreme Court that Appellant be given a public reprimand.

The Ohio Supreme Court provided the parties with the opportunity to submit objections to the Findings of Fact and Recommendations of the Board of Commissioners and, thereafter, heard oral argument before deciding on March 4, 1981, to "confirm" the Final Report of the Commissioners on Grievances and Discipline and to publicly reprimand Appellant. Pursuant to court order the reprimand was printed in the Ohio Bar , the official publication of the Ohio State Bar Association, on March 16, 1981.

ARGUMENT

I. THE GOVERNANCE OF THE BAR OF THE STATE OF OHIO IS THE PROVINCE OF THE OHIO SUPREME COURT, AND, ABSENT SUBSTANTIAL FEDERAL QUESTIONS, THAT COURT'S ACTION TO PUBLICLY REPRIMAND APPELLANT IS NOT THE PROPER SUBJECT FOR REVIEW IN THIS COURT.

This Court has recognized on a number of occasions the right of the individual states through their courts to supervise the practice of law in their jurisdiction by means of admission standards, codes of professional responsibility and provisions for punishing unethical behavior.

> "The States enjoy broad power to regulate "the practice of professions within their boundaries," and "[t]he interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental functions of administering justice, and have historically been 'officers of the Courts.'" Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975)...

In Re Primus, 436 U.S. 412, 422 (1978)

See also, Lathrop v. Donohue, 367 U.S. 820 (1961); Ohralik v. Ohio State Bar Assoc., 436 U.S. 447 (1978).

Only in situations in which it has perceived a clear abridgement of a federal statutory or constitutional right by state disciplinary proceedings, e.g.

In Re Primus, supra, has this Court been willing to review the judgments of the highest court of a state in its supervision of the legal practice of that state. This restraint is consistent with the general policy of the Court to leave to state courts the interpretation of state law and to avoid review of purely factual determinations made in state courts. See, Wright, C.A., Law of Federal Courts 3rd Ed. 535 Sec. 107 (West; 1970).

Appellant apparently asks this Court to depart from this practice. Aside from making vague assertions of federal constitutional issues in his "Questions Presented," -- issues which, as will be pointed out subsequently, Appellant fails to substantiate -- Appellant has devoted almost the entirety of the argument in his lengthy and rambling Jurisdictional Statement to a rehashing of the evidence presented before the Board of Commissioners in an attempt to urge this Court to substitute its judgment on purely factual matters and issues of credibility for that of the Ohio Supreme Court and its Commissioners on Grievances and Discipline.

Especially is this so with respect to the "Questions" Appellant has designated IV through VIII.

In Questions IV, V and VII, under the guise of free speech claims, Appellant seeks to show in his argument (Jurisdictional Statement pp. 40-46 and 50-54) that, given the facts presented at the hearing on these charges, he did not on two separate occasions violate a rule of conduct prohibiting contact by an attorney with a person of adverse interest. As to Question VI, ostensibly a due process proposition, he argues (Id. pp. 46-50) that he was justified in revealing the confidences of a client under the circumstances pertaining. In reference to Question VIII, in which he again claims, but does not demonstrate, due process considerations, Appellant merely contends in his argument (Id. pp. 54-64,)[1] that, given the particular circumstances and Ohio law on the subject, he acted properly in undertaking and pursuing through three courts an action on behalf of a client he did not represent. As

---

1. It is interesting to note that in making this argument, at page 60 of his Jurisdictional Statement, Appellant includes what purports to be a quote from Bolton v. Marshall, 153 Ohio St. 250, 91 NE2d. 508 (1950). In fact, these words do not appear in the case, and the case stands for an entirely different proposition than the one for which it is cited.

to each of these assertions the Board of Commissioners of the Ohio Supreme Court, after weighing the entirety of the evidence presented, judging the credibility of witnesses and applying state standards of ethical conduct, found Mr. Billman's claims wanting. It is not rightly within the burden of this Court to undertake, as Appellant requests, to assess the weight of evidence presented before the tribunal below, to engage in speculation about the motivation and credibility of those who came forward to testify against Appellant in the trial of this disciplinary action or to balance testimony about the Appellant's character and reputation against the severity of ethical violations charged. These are matters uniquely within the ability of the trier of fact and the court directly responsible for supervision of the practice of law in Ohio courts; this Court need not and, indeed, should not involve itself in these types of issues.

II. APPELLANT'S DUE PROCESS CLAIMS ARE NOT SUBSTANTIATED BY CASE LAW.

A. The Due Process Clause of the Fourteenth Amendment of the United States Constitution Does Not Require a Court to Expressly Address in a Written Opinion All Arguments Raised Before It.

Appellant argues in Question I. that procedural due process under the Fourteenth Amendment of the United States Constitution entitles him to an opinion by the Ohio Supreme Court which specifically addresses the constitutional arguments presented by Appellant to the Court. Implicit in his argument is the contention that due process requires an appeals court not only to issue an opinion in every case, but also to respond expressly to every objection put to it. There is, in fact, no such constitutional requirement. In Taylor v. McKeithen, 407 U.S. 191 (1972), it was stated that appeals courts should have wide latitude in their decisions of whether or not to write opinions. This is reflective of the general rule that, except as required by provisions of state constitutions or statutes, opinions need not be written by the court and whether or not to do so is discretionary. 21 C.J.S. Courts Sec. 217 (1940). This principle is the necessary predicate for the error in Appellant's argument that the court denied due process by failing to respond to

all arguments presented. If it is not a denial of the due process clause of the Fourteenth Amendment to decide not to write an opinion at all, it follows that neither can it be a denial to issue an opinion which does not address every error raised.

Ohio Revised Code Sec. 2505.21 does require a court to pass upon all errors assigned in a case, but the general rule has been that if a constitutional question is argued and the opinion contains no discussion thereof, it may be assumed that the court has inferentially passed on the constitutionality of the statute. State ex. rel. Watkins v. Donahey, 110 Ohio St. 52, 144 N.E. 125 (1924); Ames v. Consolidated Iron-Steel Mfg. Co., 9 Ohio L. Abs. 494 (Ct. App. Cuyahoga Co. 1930). In this case, therefore, it may be assumed that the Ohio Supreme Court, by not fully discussing each challenge presented to the Disciplinary Rules, has inferentially upheld their constitutionality.

B. The Time Restrictions for Investigation of Complaints are Designed to Protect the Public and Not the Attorney; Minor Delays in Investigation are not Prejudicial Such that Due Process is Violated.

Appellant next argues in Question II that the due process clause of the Fourteenth Amendment of the

United States Constitution was violated when charges against him were not timely heard under time restrictions in the state Supreme Court Rules. While due process does require a "speedy" trial, Klopfer v. North Carolina, 386 U.S. 213 (1967), this guarantee encompasses time frames after the charges have been filed. It is not a guarantee of speedy disposition measured from the date of the offense or investigation. United States v. Marion, 404 U.S. 307 (1971).

Rule V Sec. 4 of the Ohio Supreme Court Rules for the Government of the Bar of Ohio reads in relevant part as follows:

***

> The investigation of complaints ... shall be concluded within sixty days from the date of the receipt of the complaint. A decision as to the disposition of such complaint shall be made within sixty days thereafter. Extensions of time for completion of the investigation may be granted upon written request, and for good cause shown, by the Secretary or Acting Secretary, of the Board of Commissioners on Grievances and Discipline. If any investigation is not completed within one-hundred-fifty days, the matter under investigation shall be referred to the Disciplinary Counsel.

***

It is obvious that the purpose of this Rule is to guarantee that every complaint received from the public is investigated and properly disposed. The proceedings

are instituted to safeguard the courts and to protect the public from the misconduct of those who are licensed Ohio St. 2d 97, 322 N.E. 2d 665 (1975). Thus, the provision is not intended as a jurisdictional bar to the prosecution of an attorney for alleged misdeeds and it is not in the nature of a speedy trial statute of limitations which would release an attorney from prosecution for ethical misconduct.

This interpretation can be supported on several bases. The provision only restricts the time frame within which investigation must be completed. It does not contain any requirement with regard to the time frame within which a formal complaint must be filed with the Board of Commissioners. Second, the time restrictions on investigations, if not satisfied, result in the matter being forwarded to the Disciplinary Counsel, but certainly not disposed of without investigation and prosecution, if appropriate. This element clearly distinguishes it from being in the nature of a statute of limitations which would eventually release an attorney for prosecution. Third, the provision only refers to time restrictions when complaints are received from the public. It does not apply when misconduct is discovered and investigated

by the Bar itself. Thus, it is clear that this restriction on investigations is intended only to keep faith with the public by assuring it that any and all complaints received will be promptly investigated. This conclusion is supported by the Ohio Supreme Court in Ohio State Bar Assn. v. Illman, 45 Ohio St. 2d 159, 342 N.E. 2d 688 (1976): "The primary function of disciplinary proceedings is investigatory, not accusatory or prosecutorial, and those proceedings are neither civil nor criminal in nature. The standards of due process in such proceedings are not those in a criminal proceeding ..." Id. at 162, 342 N.E. 2d at 690.

Finally, Rule V Sec. 38 makes it clear that the time restrictions are not designed to permanently bar proceedings otherwise appropriate, unless such delays result in prejudice or a miscarriage of justice:

> "... No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This Rule and such regulations relating to investigations and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the Courts and the legal profession ..."

Appellant in this case has not been unduly prejudiced by the form of these proceedings. Prejudice such that a miscarriage of justice will ensue generally involves long overdue actions, see Columbus Bar Assn. v. Teaford, 6 Ohio St. 2d 253, 217 N.E. 2d 872 (1966), in which the client did not bring the complaint for four years after the alleged misconduct; or lack of notice to accused, see In re Ruffalo, 390 U.S. 544 (1968), in which the attorney was given no notice of the charges subsequently used to disbar him.

In this case there is no such overt or substantial prejudice. A joint stipulation of facts, included in the evidence introduced at the hearing, showed that the longest period of time which elapsed between receipt of a complaint from a member of the public and the completion of the investigation was from November 7, 1978 to July 10, 1979. This eight month time span can hardly be considered as a prejudice comparable to the Teaford case in which four years were allowed to elapse before the complaint was lodged by the bar association. Evidence and claims do not grow stale in eight months making it unfair to expect an attorney to defend himself. In addition, the delays in investigation were primarily the result of the number of subsequent complaints which were

being received and the necessity of time required to complete thorough investigations of all of them. The prejudice ensuing to the Appellant must be considered minimal; he was properly notified, the charges were not stale, the evidence was not aged, and the time was not unreasonable in view of the volume of complaints requiring investigation.

III. APPELLANT'S JURISDICTIONAL STATEMENT DOES NOT PROPERLY RAISE AN ISSUE UNDER THE FIRST ADMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Appellant argues in Questions IV and V of his Jurisdictional Statement that the public reprimand which he received for violations of Disciplinary Rule 7-104 infringed upon his right of free speech under the First Amendment of the Constitution of the United States. Appellant failed to raise this issue before the Supreme Court of Ohio in his Objections to the Findings and Recommendation of the Board of Commissioners on Grievances and Discipline. Appendix to Jurisdictional Statement pp. 19a-21a. Therefore, this issue is not properly before this Court.

Even had the issue been properly raised below, Appellant fails to offer any authority for the proposition that DR 7-104 violates any rights protected by the First Amendment. Instead, he simply reargues the factual disputes which have been resolved in proceedings below.

The Board of Commissioners found that Appellant, during the course of his representing a defendant in a criminal case, interviewed a co-defendant of adverse interest, knowing that the co-defendant was represented

by counsel. Appellant then transcribed the interview and, without notice to the co-defendant's counsel, filed it as an exhibit to a motion for a new trial for his client.

Without actually addressing the issue in his Brief, Appellant suggests that DR 7-104, which prohibited this conduct, "chills" his right of free speech. However, it is clear that the State does not lose its power to regulate the activities of the Bar simply because speech is a component of those activities. Ohralik v. Ohio St. Bar Assn., supra. Moreover, the Rule in question is designed to protect the adverse party's Sixth Amendment right to counsel in criminal proceedings.

> The concept that persons are benefited by retention of and active representation by a lawyer is deeply ingrained in our legal system. The status that we afford this belief is most evident in the development of the Sixth Amendment right to counsel in criminal proceedings; the ongoing constitutional debate over when and how this right may be waived reflects the high importance many attach to protecting a litigant, not only from the approaches of his adversary's lawyer, but from the folly of his own well-meaning initiatives and the generally unfortunate consequences of his ignorance.
>
> People v. Green, 405 Mich. 273 (1978).

While it is clear that lawyers have First Amendment rights of free speech, they also enjoy privileges

not enjoyed by other citizens. Along with those privileges, they have special responsibilities and are subject to special disciplinary sanctions if they violate their responsibilities to the Courts, the public or to other litigants. Hirschkop v. Snead, 594 F. 2d 356 (4th Cir. 1979). The Disciplinary Rule in question serves to curb overreaching behavior by members of the Bar.

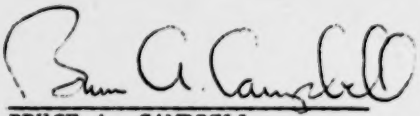
> The reasons for such a prohibition are equally clear. They arise out of the nature of the relation of attorney and client and are equally imperative in the right and interest of the adverse party and of his attorney. To preserve the proper functioning of the legal profession as well as to shield the adverse party from improper approaches the Canon is wise and beneficient and should be obeyed.
>
> People v. Green, supra at 290.

DR 7-104 does not violate the First Amendment and is, in fact, designed to prevent serious violations of a defendant's Sixth Amendment right to counsel. The Court should dismiss the appeal on this issue.

CONCLUSION

No substantial federal question exists in this appeal that merits the attention of this Court. The case should be dismissed.

Respectfully Submitted,



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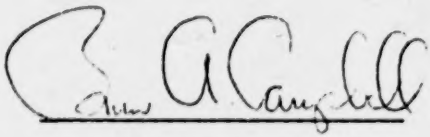
CERTIFICATE OF SERVICE

The undersigned Counsel of Record for Appellee hereby certifies that, pursuant to Rule 28 of the Rules of the Supreme Court, three (3) copies of this Motion have been mailed, postage fully paid, to Donald Lynn Billman at his office at 915 South High Street, Columbus, Ohio 43206 this 15th day of July, 1981.



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Office Supreme Court, U.S.
FILED
AUG 28 1981
ALEXANDER L. STEVAS,
CLERK

NO. 80-2045

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

DONALD LYNN BILLMAN, Appellant,

v.

COLUMBUS BAR ASSOCIATION, Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS

DONALD LYNN BILLMAN
915 South High Street
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Ohralik v. Ohio State Bar Assn.
463 U.S. 447 (1978) . . . . . 4,9.

Miscellaneous:

6 Ohio Jurisprudence 3d,
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APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

DONALD LYNN BILLMAN, the Appellant, herein submits for the Court's consideration his Brief opposing the Motion To Dismiss filed by the COLUMBUS BAR ASSOCIATION, Appellee.

JURISDICTIONAL CHALLENGE

GOVERNING THE BAR ... A MATTER OF FEDERAL CONCERN

> "It is ... important both to society and the bar itself that lawyers be unintimidated -- free to think, speak and act as members of an Independent Bar."
>
> *Konigsberg v. State Bar Of California*, 353 US 252,273 (1957).

Appellee has contended that the governing of the Bar of Ohio Lawyers is the exclusive province of the Ohio Supreme Court and "not the proper subject for review" by this Court. Such an untenable argument fails to recognize that our judicial system springs from the United States Constitution and in the scheme of jurisprudence a Lawyer's primary responsibility is to the Constitution and this Court notwithstanding whether the particular Lawyer is a member of the Bar of this Court. In the very nature of being admitted to practice before the Supreme Court it is required that an Applicant be "... of good moral and professional character ..." as is normally reflected from records received from the highest court of the State from which the applicant came, *see* Rule 5, Supreme Court Rules. Further the Ohio Supreme Court forwards to this Court and all Federal Courts copies of all disciplinary orders, *see* Rule V (20)(a), Ohio Supreme Court Rules, upon which

the Federal Courts rely.[1] The Court has a vested interest in being assured that those disciplinary orders are fairly entered.

The facts as set forth in Appellant's *Jurisdictional Statement* clearly demonstrate an intimidating effect upon a Trial Lawyer -- should the action below be permitted to stand. A Trial Lawyer will be leary of "zealously" representing a Client for fear of infuriating an opponent who will carry his vendetta to the local Bar. A Trial Lawyer will be fearful of vigorously representing Clients accused of crimes. A Trial Lawyer will be fearful of pursuing innovative legal arguments. A Trial Lawyer will be fearful of exercising his contractual rights.

APPROPRIATE FOCUS IS ON THE LAWYER'S CONDUCT

Appellee has criticized the recitation of facts concerning the Appellant Trial Lawyer

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[1] *The ramifications of Federal Courts relying upon disciplinary orders is tragically recorded in* In Re Ruffalo, *390 U.S. 544 (1968).*

however is conspicuously silent in refuting that recitation. Appellee fails to appreciate this Court's position in that regard. In *Ohralik v. Ohio State Bar Assn.*,436, US 447, 463 (1978) the Court held:

> "... the appropriate focus is on appellant's (the Lawyer's) conduct. And ... we must undertake an independent review of the record to determine whether that conduct was constitutionally protected ...".

PROTECTION AFFORDED LAWYERS

Appellee would urge the Court not to review these proceedings upon the theory that once a State has labeled a person a "Lawyer" they may do with that person as they will without regard to "rights". Such an argument is out of harmony with rulings of the Court and the basic tenants of "fundamental fairness:"

> "... a state cannot forclose the exercise of constitutional rights by mere labels."
>
> *N.A.A.C.P. v. Button*, 371 US 415,429,(1963).

> "... a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights ...".
>
> *N.A.A.C.P. v. Button, Supra,* 439.

Appellee seeks to classify the proceedings below as "investigatory, not accusatory or prosecutorial" which "are neither civil nor criminal in nature", *see* P.9, Appellee's Motion. Such a contention is as unrealistic as was Appellee's failure to recognize the motives of the accusors of this Trial Lawyer. The Court in *Konigsberg, supra,* at 257-258, addressed the nature of such proceedings:

> "While this is not a criminal case, its consequences for ... (the Lawyer) take it out of the ordinary run of civil cases. The ... action prevents him from earning a living by practicing law. This deprivation has grave consequences for a ... (Lawyer) who has spent years of study and a great deal of money in preparing to be a lawyer."

Disciplinary proceedings are in fact more devistating to a Lawyer than to a Defendant in a criminal proceeding who after serving his

sentence is permitted, with society's encouragement and support, at his election, to become a respectable member of society.[2.]

FIRST AMENDMENT ISSUE PROPERLY BEFORE THE COURT

The Appellee has contended that the Court lacks jurisdiction to review the case arguing that the First Amendment claim was not presented to the Ohio Supreme Court. A similar contention was addressed by this Court in *Konigsberg, supra,* at P. 254 wherein it was observed:

> "In considering actions of the Committee of Bar Examiners the (State) ... Supreme Court exercises original jurisdiction and is not restricted to the limited review made by an appellate court."

In supporting this holding the Court cited a decision of the California Supreme Court

---

2. *In Ohio it seems that it is easier for an Individual who has earlier committed a felony to become a Lawyer, see In Re Application Of Davis, 61 Oh St 2d 371 (1980), than it is for a suspended Lawyer to be reinstated to the Practice Of Law, see In Re Reinstatement Of Hughes, 66, Oh St 2d 135 (1981). The application of the former criminal was "approved" while the application for reinstatement by the suspended Lawyer was "denied."*

discussing the relationship between that Supreme Court and its committees. The Supreme Court of Ohio has made a similar declaration of its relationship to its Board Of Commissioners in *Mahoning County Bar Assn. v. Ruffalo*, 176 Oh St. 263, at 264 (1964) which is cited by Appellant in his *Jurisdictional Statement*, at P. 33, and therefore is not restated here.

The nature of "objections" presented to the Ohio Supreme Court is that they basically are directed to "factual" matters notwithstanding that Appellant's Objections below clearly draw into issue the contention that the entire proceedings offended the Trial Lawyer's constitutional rights to "due process" and "fundamental fairness."

The objections presented to the Ohio Supreme Court was the Trial Lawyer's contention that the Bar Association was interferring with his vigorous advocacy of causes which he championed and were having a chilling effect upon his Practice. In this regard the Court has held:

> "... abstract discussion is not the only species of communication which the Constitution protects; *the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion.*"
>
> *N.A.A.C.P. v. Button, Supra,* 429, *Emphasis supplied.*

Appellee's representation that the Ohio Supreme Court did not consider the First Amendment ramifications of this matter is unfortunate as Appellee's Counsel was present at the Oral Hearing held before the Justices of the Ohio Supreme Court on February 25, 1981. [3.] The oral argument for Appellee Bar Association was made by Ms. Ellen Fairfield during which inquiry was made of her by one of the Justices: "Does not Mr. Billman have the First Amendment Right Of Free Speech?" To which Ms. Fairfield on behalf of Appellee replied "No!"

---

3. *The matter was before the full Ohio Supreme Court excepting for Chief Justice Frank D. Celebrezze who was absent.*

The Court does not have -- in this case as it did not in *Konigsberg* -- an opinion from the State Supreme Court which may have clarified many of the matters, such as the First Amendment ramifications, present here.

It cannot be gainsaid that in each of the activities done by this Trial Lawyer adequate basis exists for asserting the Constitutional Right of "Freedom Of Speech." The requisite basis as decreed by this Court in *NAACP v. Button, supra,* 442 and reaffirmed in *Ohralik v. Ohio State Bar Assn., supra,* 458 is:

> "employ(ing) constitutionally privileged means of expression to secure constitutionally guaranteed civil rights."

CONCLUSION

For these reasons, this Court is respectfully urged to overrule the Motion To Dismiss and to note probable jurisdiction of this appeal.[4.]

Respectfully submitted,

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COUNSEL FOR APPELLANT

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4. *Counsel would respectfully acknowledge the printing error which exists in Appellant's Jurisdictional Statement at Page 60 -- as noted by Appellee in its Motion at Footnote No. 1, Page 3. The following line of type "... a proposition of law stated at 6 Ohio Jurisprudence 3d, Section 155,692, citing ..." was inadvertently ommitted immediately preceeding the citation of Bolton v. Marshall, 153 Oh St 250, (1950). Counsel sincerely regrets that his proof reading of the manuscript failed to note this ommission.*